United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

76-1079

B
P&S

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 76-1079

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

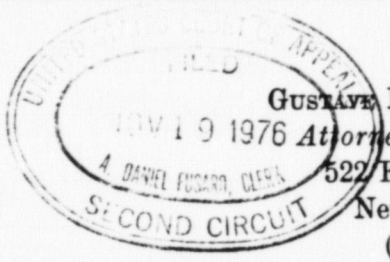
—against—

JOSEPH F. VALVERDE III,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX
Volume I—Pages 1a-302a



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DOCKET ENTRIES

UNITED STATES

v.

SAMUEL GLASSER,
JOSEPH F. VALVERDE,
EUGENE PIPER,
MARTIN KREIMAN,
STEVEN GREENSTEIN,
TOM ZUK.

PROCEEDINGS

/ 8-75	Filed indictment, Superseding 75Cr189 and referred to Griesa, J.
8-20-75	Filed Govt's Notice of Readiness for trial or or after 8-20-75.
9-8-75	TOM ZUK-deft (Atty Jack Lipson present) Pleads N/G. Case previously assigned to Judge Griesa for all purposes. Bail ($10,000 P.R.B.) Cont'd - WERKER, J.
10-14-75	TOM ZUK-deft (Atty present) w/d Not Guilty plea and pleads Guilty to Count 1. PSI ordered, Sentence adj. w/o date. Bail cont'd...Griesa, J.
11-11-75	Filed Govt's Bill of Particulars.
11-25-75	E.PIPER - Atty.& deft present...Withdraws N.G. plea and PLEADS GUILTY to Count 1 only. sentence adjd to Jan.15, 1976 9 30 a.m. P.S..I.ordered...Bail cont'd...Griesa, J.
12-4-75	S.GLASSER) J.F.VALVERDE) JURY TRIAL begun...Adj'd to 12-8-75.
12-8-75	Trial cont'd.
12-9-75	Trial cont'd.
12-10-75	Trial cont'd.
12-12-75	Trial cont'd.

12-15-75 Trial cont'd. & concluded Both deft GUILTY on count 1, 2 and 7...Count 2 DISMISSED BY Govt. Sentence adj'd to Jan.27-76 at 9:30 a.m. P.S.I. ordered. Bail cont'd. Limits extended to Calif. for Glasser and to Penna. for Valverde...Griesa, J.

12-16-75 S. GLASSER)
J. VALVERDE) - Filed Govt's. requests to charge.

12-16-75 J. VALVERDE) - Filed request to charge.

12-16-75 S. GLASSER - File request to charge..

12-16-75 Filed Govt's proposed examination of jurors

12-19-75 Filed transcript of record of proceedings.Dated Oct. 30, 1975.

1-15-76 EUGENE PIPER - filed Judgment (Atty.A.Brodsky,present)The deft is committed for a period of THREE MONTHS. Pursuant to the provisions of Section 841, Ti.21 U.S.C. deft is to be placed on Special Parole for a period of THREE YEARS to commence upon expiration of confinement..Cts.2,3 and 7 are dismissed upon motion by deft's counsel with the consent of the Govt.....Griesa,J.....Ent.1-16-76-------

1-15-76 TOM ZUK - Filed judgment (Atty.Jack Hoffinger, present) Pursuant to Section 3651, Ti. 18, USC, the imposition of sentence is suspended and deft is placed on Probation for a period of TWO YEARS. Cts.5 and 6 are dismissed upon deft's counsel's motion with the consent of the Govt...Deft is to supply the Court within three months an affdvt. setting forth employment activities, current earnings and expenses and efforts in getting employment.....Griesa,J...Ent. 1-16-76

1-27-76 SAMUEL GLASSER - Filed Judgment (Atty.David McCarthy, present) the deft is committed for imprisonment for a period of FOUR YEARS on each of Cts.1,3 and 7 to run concurrent with each other..Pursuant to Ti.21, USC, 841, deft. is to be placed on Special Parole for a period of THREE YEARS to commence upon expiration of confinement...Deft released on bail pending appeal. Bail bond to be renewed on or before Noon, Jan.29,1976.....Griesa,J.....Ent.1-28-76.

1-27-76 JOSEPH F. VALVERDE - Filed Judgment(Atty.Henry Rothblatt, present) the deft is committed for imprisonment for a period of FOUR YEARS on each of Cts.1,3 and 7 to run concurrent with each other. Pursuant to Ti.21, U.S.C., 841, deft. is to be placed on Special Parole for a period of THREE YEARS to commence upon expiration of confinement... Deft released on bail pending appeal. Bail bond to be renewed on or before Noon, Jan. 29, 1976...Griesa,J...Ent.on 1-28-76.

1-30-76	SAMUEL GLASSER) JOSEPH F. VALVERDE) Atty's present. Personal appearance bond $20,000 cash surety EXONERATED (GLASSER bond No. 75-250, 2/19/75...Griesa,J...
2-5-76	PIPER - Filed commitment is entered return. Deft delivered to Metro Corr Center on 1-15-76.
2-3-76	JOSEPH F. VALVERDE - Filed surety bond in amt. of $20,000 by stuyvesant Ins.Co.
2-3-76	JOSEPH F. VALVERDE - Filed unsecured P.R.B. in amt. of $40,000..
2-6-76	SAMUEL GLASSER - Filed notice of appeal from judgment of 1-27-76..Copy mailed to deft at 308 E. 79th St. NYC and Give to U.S.Atty's office.
2-6-76	JOSEPH F. VALVERDE - Filed notice of appeal from judgment of 1-27-76..Copy mailed to deft at 242 E. 50th St. NYC 10022 and given to U.S.Atty's office...
2-10-76	S. GLASSER - Filed bail bond in amount of $20,000 by Stuyvesant Ins.Co. dtd.2-10-76
2-10-76	S. GLASSER - Filed unsecured P.R.B. in amount of $40,000...

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

-v-

SAMUEL GLASSER,
JOSEPH F. VALVERDE,
EUGENE PIPER,
MARTIN KREIMAN,
STEVEN GREENSTEIN and
TOM ZUK,

Defendants.

INDICTMENT

S 75 Cr. 745

----------x

COUNT ONE

The Grand Jury charges that:

1. From on or about the 1st day of January, 1973 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, SAMUEL GLASSER, JOSEPH F. VALVERDE, EUGENE PI[illegible]ER, MARTIN KREIMAN, STEVEN GREENSTEIN, and TOM ZUK the defendants and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule II narcotic drug controlled substances, the exact amount thereof being to the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

3. Among the means whereby the defendants and co-conspirators carried out the objectives of this conspiracy were the following:

(a) The defendants SAMUEL GLASSER, JOSEPH F. VALVERDE and others imported and caused to be imported into the United States from various South American countries and elsewhere, including Bolivia and Argentina, large quantities of cocaine.

(b) The defendants SAMUEL GLASSER and JOSEPH F. VALVERDE distributed and caused to be distributed the imported cocaine to others, including the defendant EUGENE PIPER for redistribution to, among others, the defendants MARTIN KREIMAN, STEVEN GREENSTEIN and TOM ZUK.

(c) The defendant EUGENE PIPER would in return for the cocaine distributed to the defendants MARTIN KREIMAN, STEVEN GREENSTEIN and TOM ZUK and others, receive approximately $1,200 per ounce of cocaine and in turn pay to the defendants SAMUEL GLASSER and JOSEPH F. VALVERDE approximately $1,000 per ounce of cocaine.

OVERT ACTS

In Pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. In or about the summer of 1973, the defendant SAMUEL GLASSER gave approximately one ounce of cocaine to the defendant EUGENE PIPER in New York, New York.

2. In or about the summer of 1973, the defendant SAMUEL GLASSER gave to the defendant EUGENE PIPER approximately two ounces of cocaine in New York, New York.

3. In or about the winter of 1973, the defendants SAMUEL GLASSER and JOSEPH F. VALVERDE gave approximately three ounces of cocaine to the defendant EUGENE PIPER in New York, New York.

4. In or about the winter of 1973, the defendant EUGENE PIPER gave to the defendants MARTIN KREIMAN and STEVEN GREENSTEIN approximately three ounces of cocaine in New York, New York.

5. In or about the summer of 1974, the defendants SAMUEL GLASSER and JOSEPH VALVERDE gave to the defendant EUGENE PIPER approximately three ounces of cocaine in New York, New York.

6. In or about the summer of 1974, the defendant EUGENE PIPER gave to the defendants MARTIN KREIMAN and STEVEN GREENSTEIN approximately three ounces of cocaine in New York, New York.

7. In or about November or December, 1974, the defendants SAMUEL GLASSER and JOSEPH F. VALVERDE gave approximately ten ounces of cocaine to the defendant EUGENE PIPER in New York, New York.

8. In or about November or December of 1974, the defendant EUGENE PIPER gave approximately two ounces of cocaint to TOM ZUK at an apartment located at 1683 First Avenue, New York, New York.

9. In or about November or December, 1974, the defendant EUGENE PIPER gave approximately eight ounces of cocaine to the defendants MARTIN KREIMAN and STEVEN GREENSTEIN in an apartment located at 314 East 84th Street, New York, New York.

10. On or about January 31, 1975, the defendant STEVEN GREENSTEIN met with another person at New York, New York and distributed approximately one ounce of cocaine.

11. In or about the beginning of February, 1975, defendants SAMUEL GLASSER and EUGENE PIPER had a conversation.

12. On or abou' 'ebruary 4 or 5, 1975, the defendants EUGENE PIPER, MARTIN KREIMAN and STEVEN GREENSTEIN had a meeting in an apartment located at 314 East 84th Street, New York, New York.

13. On or about February 6, 1975, in a hallway adjacent to an apartment located at 207 East 62nd Street, New York, New York, the defendant SAMUEL GLASSER gave approximately 1,260 grams of cocaine to the defendant EUGENE PIPER.

14. On or about February 6, 1975, the defendant EUGENE PIPER gave approximately one kilogram of cocaine to the defendant MARTIN KREIMAN.

15. On or about February 6, 1975, the defendant EUGENE PIPER gave approximately 260 grams of cocaine to TOM ZUK.

16. On or about February 10, 1975, the defendant STEVEN GREENSTEIN gave eight ounces of cocaine to another person in New York, New York.

17. On or about February 14, 1975, the defendant STEVEN GREENSTEIN paid $10,000 to the defendant EUGENE PIPER in New York, New York.

18. On or about February 14, 1975, the defendants STEVEN GLASSER and JOSEPH F. VALVERDE gave the defendant EUGENE PIPER approximately one-half kilogram of cocaine in apartment 5D located at 205 East 63rd Street, New York, New York.

19. On or about February 14, 1975, the defendant SAMUEL GLASSER had a telephone conversation with the defendant EUGENE PIPER in New York, New York.

20. On or about February 14, 1975, the defendants SAMUEL GLASSER and JOSEPH F. VALVERDE had a telephone conversation with the defendant EUGENE PIPER in New York, New York.

(Title 21, United States Code, Section 846).

COUNT TWO

The Grand Jury further charges:

In or about July or August, 1974, in the Southern District of New York, SAMUEL GLASSER, JOSEPH F. VALVERDE and EUGENE PIPER, the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 3 ounces of cocaine.

(Title 21, United States Code, Sections 812, 841[a][1] and 841[b][1][A]; Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

In or about November or December, 1974, in the Southern District of New York, SAMUEL GLASSER, JOSEPH F. VALVERDE and EUGENE PIPER, the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 10 ounces of cocaine.

(Title 21, United States Code, Sections 812, 841[a][1] and 841[b][1][A]; Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

In or about November or December, 1974, in the Southern District of New York, MARTIN KREIMAN and STEVEN GREENSTEIN, the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 8 ounces of cocaine.

(Title 12, United States Code, Sections 812, 841[a][1] and 841[b][1][A]; Title 18, United States Code, Section 2.)

COUNT FIVE

6 a

The Grand Jury further charges:

In or about November or December of 1974, in the Southern District of New York, TOM ZUK, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately two ounces of cocaine.

(Title 21, United States Code, Sections 821, 841[a][1] and 841[b][1][A])

COUNT SIX

The Grand Jury further charges:

On or about the 6th day of February, 1975, in the Southern District of New York, TOM ZUK, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 260 grams of cocaine.

(Title 21, United States Code, Sections 812, 841[a][1] and 841[b][1][A].)

COUNT SEVEN

The Grand Jury further charges:

On or about the 6th day of February, 1975, in the Southern District of New York, SAMUEL GLASSER, JOSEPH F. VALVERDE and EUGENE PIPER, the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 1,260 grams of cocaine.

(Title 21, United States Code, Sections 812, 841[a][1] and 841[b][1][A]; Title 21, United States Code, Section 2.)

COUNT EIGHT

7 a

The Grand Jury further charges:

On or about the 6th day of February, 1975, in the Southern District of New York, MARTIN KREIMAN and STEVEN GREENSTEIN, the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, approximately 1,000 grams of cocaine.

(Title 21, United States Code, Sections 812, 841[a][1] and 841[b][1][A]; Title 18, United States Code, Section 2.)

FOREMAN

/S/
PAUL J. CURRAN
United States Attorney

STATUTES INVOLVED

8 a

Title 18, U.S.C., Section 2 states:

"[a] Whoever commits an offense against the United States or aids or abets, commands, induces or procures its commission, is punishable as a principal.

"[b] Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal."

Title 18, U.S.C., Section 3105 states:

"A search warrant may in all cases be served by any of the officers mentioned in its direction or by an officer authorized by law to serve such warrant, but by no other person, except an aid of the officer on his requiring it, he being present and acting in its execution."

Title 21, U.S.C., Section 812 states:

"[a] There are established five schedules of controlled substances, to be known as schedules I, II, III, IV and V. Such schedules shall initially consist of the substances listed in this section. The schedules established by this section shall be updated and republished on a semi-annual basis during the two year period beginning one year after the date of enactment of this subchapter and shall be updated and republished on an annual basis thereafter."

"[b] Except where control is required by United States obligations under an international treaty, convention, or protocol, in effect on the effective date of this part, and except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:"

"[2] Schedule II.--

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substance may lead to severe psychological or physical dependence."

"SCHEDULE II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

Title 21, United States Code, Section 841[a][1] and 841[b][1][A] states:

"(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally--

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;"

"(b) Except as otherwise provided in section 845 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of nor more than $25,000 or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of nor more than 30 years, a fine of not more than $50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment."

Title 21, United States Code, Section 846 states:

"Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy."

RULES INVOLVED

Rule 12 of the Federal Rules of Criminal Procedure states in pertinent part:

"[b] Pretrial Motions. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion....The following must be raised prior to trial:

[3] Motions to suppress evidence..."

"[f] Effect of Failure to Raise Defenses or Objections. Failure by a party to raise defenses or objections or to make requests which must be made prior to trial...shall constitute waiver thereof, but the Court for cause shown may grant relief from the waiver."

Rule 41 of the Federal Rules of Criminal Procedure states in pertinent part:

"[c] Issuance and Contents. [T]he warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person authorized by the President of the United States..."

"[h] Scope and Definition. [T]he phrase "federal law enforcement officer" is used in this rule to mean any government agent, other than an attorney for the government as defined in Rule 54[c], who is engaged in the enforcement of the criminal laws and is within the category of officers authorized by the Attorney General to request the issuance of a search warrant."

Rule 401 of the Federal Rules of Evidence states:

""Relevant evidence" means evidence having any tendency to make the existance of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Rule 403 of the Federal Rules of Evidence states:

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, waste of time, or needless presentation of cumulative evidence."

CONSTITUTIONAL PROVISIONS INVOLVED.

The Fourth Amendment to the United States Constitution states as follows:

"The righ t of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	Docket No.
vs.	Case No.
Apt. 5-D, 205 E. 63 Street New York, New York	SEARCH WARRANT

To: Any authorized agent of the Drug Enforcement Administration

Affidavit(s) having been made before me by Jeffrey Hall

that he has reason to believe that [~~on the person of~~ / on the premises known as]

Apt. 5D, 205 E. 63d Street,
New York, New York

in the Southern District of New York

there is now being concealed certain property, namely

[describe property]

money which is official Advance Funds of the United States Government or the proceeds of a narcotics transactions and narcotic drug controlled substances

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of two days (not to exceed 10 days) the person or place named for the property specified, serving this warrant and making the search [~~(in the daytime — 6:00 A.M. to 10:00 P.M.)~~ / at any time in the day or night*] and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before me as required by law.

[Federal judge or magistrate]

Martin D. Jacobs

Dated this 14 day of February, 1975.

[Judge of the District Court of the United States or United States Commissioner]

*[If a search is to be authorized "at any time in the day or night" pursuant to Rule 41(c), Federal Rules of Criminal Procedure, the affidavit shall be stated in the alternative (Rule 41(c)(1)) and the reasons for the authorization shall be stated in the affidavit (Rule 41(c)(2)). A search warrant may be executed "at any time in the day or night" pursuant to Rule 41(c) only if authorized in the manner provided in Rule 41(c)(2). Otherwise, unless the warrant directs that it may be executed at any time in the day or night, it shall be executed only between 6:00 A.M. and 10:00 P.M. pursuant to Rule 41(c).]

[~~RETURN~~]

[~~Date received and executed~~]

[~~Copy left with person from whom property was taken~~]

[~~Copy left at premises from which property was taken~~]

[~~Property was taken from~~]

[~~Inventory made in the presence of~~]

[~~Inventory of property taken~~]

[~~Certification~~]

BEST COPY AVAILABLE

RETURN

I received the attached search warrant , 19 , and have executed it as follows:

On , 19 at o'clock M, I searched the person or premises described in the warrant and

I left a copy of the warrant with _____
name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

This inventory was made in the presence of

and

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

_____

Subscribed and sworn to and returned before me this day of , 19 .

_____,
Federal Magistrate

United States District Court

FOR THE

FOR THE
SOUTHERN DISTRICT OF NEW YORK

Magistrate's Docket No.

UNITED STATES OF AMERICA

vs.

Apt. 5-D, 205 E. 63d Street
New York, N.Y.

Case No.

AFFIDAVIT FOR
SEARCH WARRANT

BEFORE Martin D. Jacobs, United States Magistrate
Name of Magistrate — Address of Magistrate

The undersigned being duly sworn deposes and says:

That he (has reason to believe) (~~has probable cause~~)[1] that (~~XXXXXXXXXXXXXXXX~~ (on the premises known as)

Apt. 5-D, 205 E. 63d Street
New York, New York

in the Southern District of New York

there is now being concealed certain property, namely
here describe property

money and narcotic drug controlled substances

which are contraband and the fruits of a narcotics transaction
here give alleged grounds for search and seizure

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

(See attached rider.)

JEFFREY HALL
Special Agent, Drug Enforcement
Administration
Signature of Affiant
Official Title, if any

Sworn to before me, and subscribed in my presence, February 14, 19 75

1. I am a Special Agent of the Drug Enforcement Administration.

2. A few days ago, Steven Greenstein was arrested by me and other agents in possession of approximately 8 ounces of cocaine, which he had agreed to sell to an undercover agent.

3. After his arrest, Greenstein agreed to co-operate and told me that his source of supply for cocaine was Eugene Piper. I then gave him $10,000 in cash which was Official Advance Funds of the United States Government.

4. Greenstein gave the $10,000 to Eugene Piper today at about 3:30 P.M.

5. Piper was immediately followed to apartment 5-D, 205 E. 63d Street, New York, New York (hereinafter "apartment 5-D").

6. In the hallway outside Apartment 5-D, I could overhear the voices inside. Piper talked to a person he called Joe and said, in substance, "When is the next load coming in?" The other voice responded, "we'll have a new load March 10th."

7. Piper then left the apartment and was arrested. He did not have any of the $10,000 given him by Greenstein on his person. He did have one half kilogram of cocaine in his possession.

8. After his arrest Piper told me that for cocaine his source of supply was Joe Valverdi and that he lived in apartment 5-D. He then placed two phone calls to telephone number (212) 935-9773, which is registered to Joseph Valverdi, Apt. 5-D, 205 E. 63d Street, New York. Piper spoke to two persons who identified themselves as Art and Sam and had conversations which related to narcotics and payment for narcotics.

9. I and other agents of the Drug Enforcement Administration then proceeded to Apartment 5-D, and, at about 5:45 P.M. arrested Joseph Valverdi and Sam, who was identified as Sam Glasser. No money was recovered.

RETURN

I received the attached search warrant 14 February, 1975, and have executed it as follows:

On 14 February 1975 at 9:25 o'clock P M, I searched the person or premises described in the warrant and

I left a copy of the warrant with At the place of search
Name of person searched or owner or "at the place of search"

together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

2) BLACK Suitcases containing miscellaneous papers except bearing LA GUARDIA Airport claim tickets.
1) ALLigator Briefcase Containing PASSPORTS (TWO), TWO ADDITIONAL PASSPORTS
1) BLACK Suitcase Containing Miscellaneous papers Found in AREA OF Bedroom Bookshelves
2) GUNS, 1 BOX AMMO .380 caliber
1) Book entitled "The FOUNDING FATHER containing $3,090.00 IN A MANILA Envelope.
1) FRENCH DICTIONARY containing $2,900.00 IN a Grey Envelope.
Book entitled GLORY AND the LIGHTNING containing $10,000.00 in A MANILA Envelope.
ALL ITEMS SEIZED within MASTER BEDROOM.

This inventory was made in the presence of S/A Joseph Sullivan and S/A Michael Gray and S/A Jeffrey Hall

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

Subscribed and sworn to and returned before me this day of , 19 .

Federal Magistrate

Sig left by S/A Gray on 2/15/75

Rec'd 2/15/75

HEARING ON MOTION TO SUPPRESS

dhrm 18a

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	
vs.	75 Cr. 189
SAMUEL GLASSER and JOSEPH F. VALVERDE,	
Defendants.	

Before:

HON. THOMAS F. GRIESA,

District Judge

April 29, 1975
Room 618, 10:20 o'clock, a.m.

APPEARANCES

PAUL J. CURRAN,
United States Attorney
BY: RUDOLPH W. GUILIANI,
JOHN FLANNERY,
Assistant United States Attorneys

MC CARTHY, DORFMAN & BRENNER, ESQS.,
Attorneys for Defendant Glasser;
BY: DAVID W. McCARTHY, ESQ.,
JOEL BRENNER, ESQ.,
of Counsel

HENRY ROTHBLATT, ESQ.,
Attorney for Defendant Valverde;
BY: HENRY ROTHBLATT, ESQ.,
JOHN ROTHBLATT, ESQ.,
of Counsel

THE CLERK: United States of America against Glasser and Valverde.

(All sides ready.)

THE COURT: What is the order of the proof we are going to have?

MR. MC CARTHY: Your Honor, we represented at the pretrial hearing that we would commence the hearing by putting Mr. Glasser on the stand because the Government had objected to having a hearing without an affidavit or testimony taken from Mr. Glasser. So we represented that Mr. Glasser will testify and he will testify first.

Just as a preliminary statement, your Honor, I would ask that this be considered an omnibus hearing. We are alleging basically two separate violations of the Fourth Amendment. One has to do with the tapes of conversations, telephone tapes, on the afternoon of February 14 allegedly between Mr. Piper and Mr. Glasser.

Also we are alleging that there were certain violations of the Fourth Amendment with respect to tangible evidence seized at an apartment search and seizure by the Drug Enforcement Administration on that same afternoon and evening.

THE COURT: Okay.

MR. ROTHBLATT: Your Honor, before we proceed,

might the record show that, speaking on behalf of the defendant Valverde, that in conducting this hearing to assert Fourth Amendment rights on behalf of our client, and in offering testimony as we do at this hearing, we do not, by offering our testimony, in any way intend to waive our rights under the Fifth Amendment against self-incrimination. Our purpose in offering this testimony is solely to assert and press all of our Fourth Amendment rights.

THE COURT: Is there any particular thing you have in mind?

MR. ROTHBLATT: Well, except, your Honor, that if in the course of any interrogation here, that the testimony offered may not be offered affirmatively if and when there should be Government's proof against the defendants in this case. In other words, the cases hold that any testimony given by a defendant asserting his Fourth Amendment rights may not be used affirmatively at the trial in chief.

So we want it very clear that we do not waive any of our Fifth Amendment rights by testimony given at this hearing.

THE COURT: Okay. Let's go with Mr. Glasser.

MR. MC CARTHY: The defense calls Samuel Glasser to the stand.

SAMUEL M'CHEYNE GLASSER, called as a witness by the defendant Glasser, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MC CARTHY:

MR. MC CARTHY: Your Honor, although there are no other witnesses in the courtroom, may I ask that a particular motion to exclude witnesses -- that I be permitted to have a motion --

THE COURT: You call my attention to any witnesses that come in.

MR. BRENNER: Thank you, your Honor.

Q Mr. Glasser, what is your educational background?

A I'm a graduate of law school.

Q Which law school did you graduate from?

A From the University of Pennsylvania Law School.

Q Did you attend college?

A Yes, I attended and graduated from Cornell University.

Q When did you graduate from Cornell?

A 1967.

Q Mr. Glasser, do you remember February 14, 1975?

A Yes, I do.

Q What happened on that date, if you recall, with

respect to an arrest? Were you arrested on that day?

A Yes, I was arrested on the 14th.

Q As you recall, where were you arrested?

A I was arrested in Apartment 5-D in building 205 East 63rd Street.

Q Do you know whose apartment that is?

A The apartment is owned by Edwardo Palacios.

THE COURT: It is a cooperative apartment?

THE WITNESS: That's right.

Q If you know, was anyone renting that apartment from Mr. Palacios?

A Yes.

Q Who was renting that apartment from Mr. Palacios?

A Mr. Joseph Valverde was renting it.

Q Is that Mr. Valverde who is present in the courtroom today?

A Yes, it is.

Q If you can recall, approximately what time were you arrested?

A I was arrested at approximately 5:30 in the afternoon of the 14th.

Q For how much time prior to the time you were arrested were you in the apartment?

A Well, I was in the apartment on and off all day.

Q Had Mr. Valverde given you permission to be in that apartment?

A Yes, he did. I was a guest.

Q You were a guest?

A I was a guest in the apartment.

Q Did there come a time on that day when a Eugene Piper entered that apartment?

A Yes.

Q By the way, who is Eugene Piper?

A Eugene Piper is present in the courtroom, he is my brother-in-law.

Q He is not present in the courtroom at this time.

A He is not? He was. He is my brother-in-law.

Q How many times was Mr. Piper in that apartment that day?

A He was in the apartment on that day on three separate occasions.

Q When was the first occasion that he was in the apartment?

A Approximately at between 11 and 12:15 or so.

Q How long did he remain in the apartment at that time?

A Well, for an hour and 15 minutes.

Q When was the second time that he entered the apartment?

A He entered the appartment approximately at 4 o'clock.

Q How long did he remain in the apartment at 4 o'clock?

A 15 or 20 minutes.

Q Did you have any conversation with Mr. Piper the second time that he was in the apartment?

A No, I really did not have any kind of discussion with him.

Q Were you continuously present when Mr. Piper was in that room in the apartment?

A No, I mean, on several occasions I would go into -- I would go into other rooms of the apartment.

Q On the second occasion, where were you located when Mr. Piper had entered the apartment?

A I was in the living room of the apartment.

Q Did you remain in the living room of the apartment for the entire 15 or 20 minutes that Mr. Piper was present?

A No, I went to the bathroom, I think, on several occasions, which was not adjoining the living room.

Q During the time that you were present in the apartment the second time with Mr. Piper, that is, between 4 and 4:20 approximately, did you have any conversation with Mr. Piper concerning cocaine?

A No, I did not.

Q As far as you know, did you hear any conversation

between Mr. Piper and Mr. Valverde that you recognized to concern cocaine?

A No, I did not.

Q Was there a third occasion when Mr. Piper was in that apartment?

A Yes, Mr. Piper came to the apartment at approximately 5:30 that afternoon.

Q Between 11 o'clock that morning and 5:30 that afternoon, did you have any telephone conversations with Mr. Piper?

A Yes, I had a couple.

THE COURT: 11:30 to what?

MR. BRENNER: 5:30.

Q Between 11:30 and 5:30 that afternoon did you have any telephone conversations with Mr. Piper?

A Yes, I had, I think, three or four.

Q Did you consent to have any third party intercept those conversations?

MR. GUILIANI: Objection, your Honor. That is not legally relevant as to whether he consented to have a third party. He consented to talk to a second party.

THE COURT: It does not make any difference. I think you are right, but it is not hurting anybody. Objection is overruled.

A No, I did not.

Q Did you consent to have anyone tape your conversation with Mr. Piper?

A No, I did not.

Q Did you consent to have anyone monitor your conversations with Mr. Piper?

A No, I did not.

Q You stated that Mr. Piper returned at approximately 5:30; is that correct?

A That's right.

Q If you can recall, did you have a conversation with Mr. Piper at that time?

A Yes, I did.

Q Could you please tell the Court what he said to you and what you said to him, as best as you can recall.

A When Gene Piper entered the apartment at approximately 5:30, his first words were, "I have been busted."

Whereupon I said, "For what purpose?"

And he said, "For having cocaine."

And he was very anxious. I tried to seat him down, I tried to calm him down. And he said -- I asked him in essence what happened. He said he was arrested on the street for having cocaine and I said, "Was it a lot of cocaine? Was it yours, were you selling it?" Questions of that nature.

And he said, "Well, it does not make any difference now because everybody is involved."

And I said, "What do you mean everybody is involved?"

He said, "Everybody is involved. They have everybody."

I said, "What do you mean?"

He said, "Even you and Joe are involved."

And I said, "How come? Why?"

And he said, "Because they have the tapes. Because they have conversations, they have tapes."

And I said, "What are you referring to?"

He said, "I called the apartment several times today and they have tapes of all the conversations."

And I said, you know, in essence, "So what?" I said, "How do you know?"

And he said, "Well, I was forced to make a telephone conversation to you, they made me call you. I was taken to a telephone booth. An agent came into the booth with me, forced me to make a telephone call to you, forced me to make several telephone calls to you. It was not so long ago."

He also said, "I can only stay here for a few minutes before the agents are going to come into the room."

going to come into the apartment."

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And I said, "What do you mean?"

He said, "They are all around the building, they are in the hallways, they are up and down the corridors. They are here and I've got to leave within about ten minutes or the agents will come in, or I have to leave before." It was very confusing statements.

That was the substance of the conversation.

Q Did there come a time when Mr. Piper was about to leave the apartment?

A Yes.

Q Approximately how long after he had arrived in the apartment was he about to leave the apartment?

A Oh, five -- it could have been five or ten minutes

Q Did Mr. Piper go to the door?

A Yes.

Q What happened then?

A As we opened the door to allow Mr. Piper to leave the apartment, he had not even left the apartment, he was in the process of leaving the apartment when at least six or seven agents, people, came crashing into the apartment, knocked him off balance. He staggered back into the room and the agents came into the apartment.

Q At the time that these men entered the apartment,

did any of them have guns exhibited?

A Yes, three or four had guns, at least.

Q Did any of them state that they had a search warrant?

A No.

Q Prior to the time that they entered the apartment, did they knock on the door?

A No.

Q Did they announce that they were agents about to enter the apartment?

A No.

Q Prior to the time they entered the apartment, did they say that they were going to search the apartment?

A No, they did not.

Q Did they say that they had an arrest warrant?

A No.

Q Did you ask them whether or not they had a search warrant?

A Yes. On several occasions.

Q When the agents entered the apartment, did any of them exhibit any identification, show you any identification?

A No, they did not.

Q Did you see any of the agents with any identification attached to their clothing?

A Yes, a couple of them had metal badges on their belts, as I recall.

Q At any time did you ask the agents whether or not they had a search warrant?

A Yes, I did.

Q Did any of the agents respond to your question?

A Yes, they did.

Q Do you know the name of the agent who responded?

A Yes.

Q What was his name?

A Jeff Hall.

Q What did he say?

A He said at one point that was all taken care of I did not need to concern myself with that. And they would be doing the asking of questions, not me." And that was basically Mr. Hall's response.

Q What happened --

A "Shut up." That nature.

Q If you can tell us, how long were you in the apartment before you were taken from the apartment?

A Approximately two and a half hours.

Q After the agents entered the apartment what happened to you?

A Well, two of the agents came up to me and hand[illegible]

me. Sat me down on a couch in the living room.

Q While you were sitting on the couch were you handcuffed?

A Took and emptied the contents of my pockets.

Q While you were sitting on the couch in the living room, were you handcuffed?

A Yes.

Q For approximately how long were you sitting on that couch?

A I suppose for a half hour or so.

Q Did you observe the other individuals in the apartment doing anything, the other agents in the apartment doing anything?

A Yes. I saw them handcuff Mr. Valverde and Mr. Piper.

Q Did they do anything with respect to the contents of the apartment?

A Yes, then I saw them commence to, first of all, sort of go through the living room, looking to see what was there.

And then I saw agents, from where I was sitting, I saw them walk through the foyer and head down the corridor, which leads to the two bedrooms and bathrooms and the rest of the apartment.

Q At that time, when you were seated on the couch, were you able to see what they were doing in the bathroom?

A No.

MR. MC CARTHY: Withdrawn.

Q Were you able to see what they were doing in the bedrooms?

A No, I couldn't see.

Q Were you able to hear anything in the bedrooms, from what was occurring in the bedrooms?

A I could hear a conversation in rooms which had to be, because there were no other rooms, the bedrooms. I would hear, for example, from time to time shouts saying, "Come here," so-and-so. First name. And then an agent in response to that kind of question would walk down the corridor and presumably join the other agent who had called him.

There was a great deal of coming and going in the apartment. There were seven agents, as I said, and they were walking continuously about through the living room, through the other rooms.

Q Did you see any of the other agents with any suitcases or anything else in their possession?

A Yes.

Q Do you know the name of that agent or agents?

A Agent Gray, I believe, held a duffle bag with him

I believe it was Agent Gray. There was one agent holding a duffle bag throughout the entirety they were in the apartment.

Q Was that agent carrying the duffle bag?

A Yes, he was.

Q Was he moving into the corridors and into the bedrooms?

A Yes, from time to time the agents would group together in a huddle around Mr. Gray and they would look at the duffle bag and they would whisper to each other. There was a great deal of whispering going on.

Q Did there come a time when they asked you for identification?

A Yes.

Q Did you indicate to them in any way your identification or where your identification might be found?

A Yes, I directed them to my briefcase which was in the foyer of the apartment.

Q What happened then with respect to your briefcase?

A I was led to the -- I offered to walk over to the foyer to get it and so one of the agents accompanied me to the foyer, where my briefcase was, and one of the agents took it and they brought me and the briefcase back to -- at that time, at that time to where I had been moved, which was behind a screen seated at a kitchen table. But not actually

in the kitchen, at the table adjoining the kitchen.

Q What did they do with respect to your briefcase in the kitchen area?

A Indicated how it was opened, and it was opened, and they emptied the contents of the briefcase on the kitchen table.

Q What did they, with respect to the contents of the briefcase, do?

A I directed them then, I said, "You can find my identification in such-and-such a wallet," or whatever, and they looked at it. They also -- I also had my passport with me and they looked at the passport and thumbed through that; and after a time, it was not until right before I left the apartment, replaced all the contents of the briefcase into the briefcase.

Q Did they in fact examine the contents of the briefcase?

A Yes.

Q You stated you were placed behind a partition, is that correct?

A Yes.

Q Approximately how long after the agents arrived were you placed behind that partition?

A Approximately 35 minutes or so. I sat on the couch

for 30 minutes. After that I was placed behind the partition.

Q Did you remain behind the partition for the duration of the two and a half hours that you were in the apartment before you were removed?

A No. From time to time I would be led into the living room, seated somewhere else, typically brought back to behind the partition; but there were times I was led in the living room when -- for no real apparent reason, and then was reseated behind the partition. So I was led out into the living room from time to time, that being the only place I was led.

Q Did there come a time when you left the apartment, when you were removed from the apartment?

A Yes.

Q If you can tell us, did any agents leave with you?

A Yes.

Q Do you know the names of the agents who left with you?

A No.

Q If you know, did any of the agents remain in the apartment?

A Yes.

Q Do you know the agents who remained in the apartment?

A Yes, I remember Jeff Hall stayed in the apartment,

said something to the effect that he would stay behind or something.

Q At any time prior to the time that you left the apartment on February 14 was a search warrant exhibited to you?

A No.

Q After you left the apartment, where were you taken?

A I was taken to the Drug Enforcement Agency headquarters.

Q Did there come a time later that evening or early the next morning when you had another conversation with Eugene Piper?

A Yes.

Q Where did that conversation take place?

A That conversation took place in the Federal Detention Headquarters at 427 West Street.

Q Could you tell us what that conversation was, please?

A Well, naturally in the first time that all three of us had been together since --

THE COURT: When was this conversation?

THE WITNESS: That took place approximately -- it must have been after midnight.

THE COURT: That same day?

THE WITNESS: Yes, that same day.

THE COURT: This was a conversation involving you and Valverde?

THE WITNESS: No, myself and Mr. Piper.

THE COURT: All right.

THE WITNESS: I think Mr. Valverde was in attendance and he could have overheard it. We were all placed together in one cell, in maximum security. So it was fairly small quarters.

Q Could you tell us what that conversation was, what you said to Mr. Piper and what he said to you?

A Yes, I said, "Jesus, how did you -- what's the story? How is it that I'm here? I mean, you said that we were all involved by virtue of these telephone conversations. What happened?"

He said, "Well," he said, "I had cocaine with me and I was arrested, and an agent," I forget if he said one or more, but how many agents there were, but he said he was taken to a telephone booth, he was forced inside, he was given a dime and he was told that if he did not -- he had to call me or else, or else he would face a long prison term. That was his only chance, if he called Joe's apartment and implicated us, tried to implicate us, whatever.

In substance he said, you know, he was forced to call us and the agents with him forced him to do so in a

menacing fashion."

And I said, "Well, how did you know it was taped or, you know," -- he said, "Well, they had a tape recorder with them. You know, in the phone booth."

Q Mr. Glasser, did we discuss your testimony today, you, myself and Mr. Brenner?

A Today?

Q Yes. Did we discuss the fact that you were going to testify today?

A Yes.

Q Did we inform you of what questions you were going to be asked?

A Very generally.

Q When did that conference take place?

A Yesterday afternoon.

MR. MC CARTHY: I have no other questions.

If I might, your Honor, just reopen my direct examination.

BY MR. MC CARTHY:

Q Firstly, Mr. Glasser, the second time Mr. Piper was in the apartment, approximately 4 o'clock, can you tell us where the conversation or any conversation that took place took place? In other words, where in the apartment?

A I have stated that I had no conversation with Mr. Piper at that time.

Q I know you didn't. Was there a conversation with Mr. Piper?

A Not really. It was --

Q Did Mr. Valverde talk to Mr. Piper?

A Not really, it was just an exchange of greetings, of pleasantries, of irrelevancies.

Q Where were you located, where were you and Mr Valverde and Mr. Piper located in the apartment between 4 and 4:20?

A Approximately -- well, we were located in the living room.

Q Approximately how far is that from the front door of the apartment?

A Minimum of 20, 25 feet.

Q Mr. Glasser, did there come a time yesterday morning when you went back to 205 East 63rd Street?

A That's correct.

THE COURT: Yesterday morning, you said?

MR. MC CARTHY: Yesterday morning, your Honor.

Q At that time was there a demonstration made by a John Woram?

A That's right.

Q Could you describe for us, first of all, in which apartment did this demonstration take place?

A Apartment 4-D.

Q Is that apartment the same as Apartment 5-D, as far as you know?

A In terms of the floor plan it is identical.

Q When you were in Apartment 5-D on February 14 was the apartment furnished?

A Yes, it was.

Q Was there any carpeting on the floor?

THE COURT: You are talking about 5-D?

THE WITNESS: 5-D on the 14th of February.

Q On February 14 was 5-D furnished?

A Yes, it was over-furnished, I might say.

Q Was there any carpeting on the floor?

A Yes, it was wall-to-wall carpeting.

Q Can you describe that carpeting for us, please? Was it shag or short or what?

A I really can't. It was not shag, it was just normal carpeting. I don't recall it except that it was wall-to-wall.

Q Yesterday morning when you were in Apartment 4-D was Apartment 4-D furnished?

A No, it was empty and bare.

Q Was there any carpeting on the floor?

A No, there was not.

Q On February 14, when Mr. Piper was in Apartment 5-D was there a television or stereo or radio playing?

A Yes, there was a stereo on.

Q Was it loud or low?

A No, it was -- it was not on loud. It was just on.

Q Yesterday morning when Mr. Woram was in Apartment 4-D and you were in Apartment 4-D, could you describe for the Court what you did and what you observed Mr. Woram do?

THE COURT: What was the name of that person?

MR. MC CARTHY: John Woram, W-o-r-a-m.

A Mr. Woram had a great deal of apparatus with him and conducted five or six tests in the apartment, to my recollection. What he did, he set up two microphones on stands. The stands must have been four and a half feet high or so each. Maybe higher, five feet. He placed one of the microphones in the center of the living room, so to speak, and the other microphone outside the door. These microphones were hooked up to a tape recorder and then he conducted the various tests involved.

First of all, he made various measurements of the room, he took various -- he had a meter, which apparently could register the level of, you know, the level of sound in the apartment and without the apartment. He made various tests. I don't know exactly what they were. Preliminary to

the basic tests, which were --

Q Could you describe the basic tests?

MR. GIULIANI: Objection, your Honor, he can testify to this, the expert, not Mr. Glasser.

MR. MC CARTHY: I am just laying a foundation.

THE COURT: Is Mr. Woram going to be here?

MR. MC CARTHY: Mr. Woram is going to be here.

THE COURT: This afternoon? How long is this going to go on?

MR. MC CARTHY: Judge, I hope it will be finished today. Mr. Woram's testimony I hope to be brief.

THE COURT: Let's not have it twice. I do not want to hear the same testimony twice.

MR. MC CARTHY: Fine. The only thing I am asking is if there is any question as to foundation, I wanted to lay the foundation now so Mr. Woram would not come in cold.

I have no other questions under those circumstances.

THE COURT: Any questions by Mr. Rothblatt?

MR. ROTHBLATT: I have no questions, your Honor.

THE COURT: All right. The Government?

CROSS EXAMINATION

BY MR. GIULIANI:

Q Mr. Glasser, when did you first meet Eugene Hasp?

A I really don't know. It must have been 1960 or so

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Q How did you meet him?

A How did I meet him?

Q Yes.

A What do you mean how did I meet him?

MR. MC CARTHY: Judge, may I object to this? I respectfully submit that this is beyond the scope of cross examination and is irrelevant for the purposes of this trial.

THE COURT: Overruled. Go on.

Q How did you meet him?

A I shook hands with him. I mean, he was introduced to me through my -- through a girl I was seeing at the time. It was his sister.

Q Has Mr. Piper at any time worked for you in any capacity?

A No. He has not.

Q You were involved in a wine business of some sort. Did he work in that wine business?

A No.

Q Did you ever pay him any money for doing work for you?

A In the wine business?

Q In any business.

A No, I just said I didn't.

Q Did you, over the course of time that you knew him,

have occasion to see him socially? 44a

A Yes.

Q Then he became your brother-in-law at some point; is that right?

A That's right.

Q Did you continue to see him socially even after you and his sister separated?

A Yes.

Q Would you say that you were on friendly terms with Mr. Piper?

A Always have been.

Q You know of no reason why Mr. Piper would want to give evidence against you?

A I don't know. I can imagine reasons, yes.

Q Have you ever had a fight with him?

A I have had arguments with him.

Q Does he have any personal reason to testify against you?

A He could well. Obviously he does.

Q Can you tell us what those reasons are aside from what you have already told us that the agents supposedly said to him, that he'd be in a lot of trouble if he didn't make the telephone call; any reasons other than that?

A Having made that decision, he realizes that he can't

do anything that would be inconsistent with it now, No. 1.

No. 2, Gene Piper was not exactly a success story. I was. I had known Kelly approximately, I suppose, a year and a half or so prior to Gene's return from the service. I was taken in by his parents, later to be my in-laws, and occupied a fairly large role in their life.

When Gene came back, it was almost as though I had become the surrogate son, I suppose, in a way, for this reason: I always went out of my way to be especially friendly to Gene. I never wanted for him to think that I was elbowing him aside in his parents' eyes for any reason.

There might well have been a great deal of resentment from him.

Q The short answer of that is you think he might have been jealous of you?

A At some point, sure. There might have been resentment.

Q You had occasion to travel a lot, didn't you, Mr. Glasser?

A When?

Q Well, from the time --

MR. MC CARTHY: I must respectfully object again. I do not see where this is particularly relevant to the motion to suppress as to what occurred on February 14 but

that he traveled a lot.

THE COURT: Objection overruled.

Q You had occasion after you left the law firm of -- what law firm was that?

A Willkie,Farr and Gallagher.

Q After you left that law firm you had occasion to travel a lot to South America?

A I traveled to South America.

Q Frequently?

A How often is frequently?

Q You tell me.

A I went five, six, seven times.

Q A year?

A A year? No, I think probably in total.

THE COURT: Let's see. What are we talking about in terms of time? The person you referred to as Kelly, was this your wife?

THE WITNESS: Yes. It is Mr. Piper's sister.

THE COURT: All right. What was the name of the family?

THE WITNESS: The name of the family is Hyde.

THE COURT: When did you marry Kelly Hyde?

THE WITNESS: Kelly Piper. She's a stepchild.

THE COURT: Oh, I see.

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THE WITNESS: As is Gene.

THE COURT: All right.

Q When did you leave --

A 1972.

Q When did you leave the law firm?

THE COURT: Just a minute, please.

You married Kelly Piper in 1972?

THE WITNESS: 1972.

THE COURT: Are you separated?

THE WITNESS: No, I live with her now. I'm legally separated but we have settled.

THE COURT: All right.

THE WITNESS: We're separated, though.

THE COURT: You were with Willkie, Farr until what time?

THE WITNESS: Until 1973.

THE COURT: All right. Okay. I've got that. Go ahead, Mr. Giuliani.

Q Mr. Glasser, you say you live with your wife now presently?

A Yes.

Q But you are legally separated from her?

A Well, also we are in legally the status of attempting reconciliation.

Q And you live with her now, like yesterday and the day before and the day before that?

A That's what I said.

Q Can you tell us where you live?

A Yes, we occupy right now Isabel Hyde's apartment. We are in the process of moving to 308 East 79th Street.

Q What's the address again?

A 201 East 83.

THE COURT: Who is Isabel Hyde?

THE WITNESS: It is Kelly's sister and Gene's sister, her step-sister.

THE COURT: Where is that apartment?

THE WITNESS: That's 201 East 83. I've been there for a month.

THE COURT: You are now in the process of movin, to --

THE WITNESS: 308 East 79th Street.

Q From the time that you left Willkie, Farr until February 14, 1975, you made approximately four or five trips to South America; is that correct?

A I think maybe more.

Q Maybe more?

A That's right.

Q Six or seven?

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A That sounds more right.

Q Did you also make frequent --

THE COURT: Look, there is no jury here and I am going to allow some latitude and we have a ground rule which prevents any testimony from being used at a trial if there is one --

MR. GIULIANI: Yes, sir.

THE COURT: -- but still I am not going to permit this to be a kind of discovery proceeding. I mean, it has to relate to Mr. Piper or the events of February 14 in some reasonably direct way.

MR. GIULIANI: Your Honor, I was just about to do that by asking him:

Q Did you ever call Mr. Piper from South America?

A No. No, I didn't.

Q Did you also have occasion to travel to Florida?

A Yes.

THE COURT: To what?

MR. GIULIANI: Florida.

Q You did?

A Yes.

Q Did you ever have occasion to call Mr. Piper from Florida?

A I may have called him from Florida. I think I did.

We are talking about a period of time close to two years.

Q Directing your attention to the day you were arrested, February 14, 1975, isn't it a fact that you called Mr. Piper the day before that from Florida? That would be February 13, 1975.

A No, I don't think I did. I think I called him earlier that week from Florida.

Q During the telephone conversation that you had with Mr. Piper from Florida, did you arrange to meet with him on Friday, February 14, 1975?

A No, because I didn't know when I was coming back.

Q Did you tell him that you would meet with him when you came back?

A That would always be assumed. I would meet Gene whenever I came to town.

Q Whenever you had occasion to be in New York you would meet with Gene Piper?

A I would normally see him when I was in New York.

Q Had he ever been other than on this occasion on February 14, 1975, in Valverde's apartment, the apartment you have been testifying about?

A I don't know, I was a guest in the apartment.

Q Had you ever been there with Piper before?

A No.

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Q Did you give him the address and tell him to meet you there?

A I think I called him when I got to New York and I said I was staying over at Joe's, and why didn't he come down to meet us and we'd go out to lunch.

THE COURT: Let me have the last question and answer read back, Mr. Reporter.

(Question and answer read.)

Q When did you call him?

A I called him the morning of the 14th.

Q When had you arrived in New York?

A The night of the 13th -- New York City the early morning of the 14th. 1 or 2 in the morning on the 14th.

Q And you also say that you recall talking to him earlier in the week?

A Yes.

Q Did you call him from Florida?

A I said I did.

Q At his apartment? You called him at his apartment?

A Yes.

Q Can you tell us what you said to him and what he said to you during that conversation?

A It seemed to me that we had had a conversation, oh, God knows how long prior to my calling him from Florida,

and we had talked about boats and what-not.

And also, seems to me when I was in Florida, there was some kind of race going on, and there was surely -- I mean, there was just a call to exchange pleasantries because I had not been able to see him in New York for, oh, sometime. I had not seen him for a couple of months, I think.

And I said, you know, "Hoping to see you," etc., etc., "a shame you can't be down here," because I knew how much Gene liked boats and what-not, and I was describing the ones which were around, etc.

It was a very short conversation, as I recall, and I said I'd try to be up by the end of the week.

Q Were all your calls to Mr. Piper from Florida for the purpose of exchanging pleasantries?

A What do you mean all my calls?

Q You said you had made other calls to him over the course of a year or two from Florida.

A No, I didn't say that.

Q This was the only call you made to him from Florida

A I recall making a call. I don't recall making more than one call.

Q So it is your testimony you only made one call to Mr. Piper from the State of Florida?

A Yes, I think that is all I made that week. As I

said, you are talking about, you know, a long period of time. I may have made other calls when I was there.

Q When you called him on the morning of February 14 and asked him to come over to Joe's apartment, did you give him the address or did he know the address?

A I think I had to give him the address. I don't think he would have known that.

Q And he arrived, you told us, at approximately 11 or 11:30 on that morning?

A I said yes, about 11:30.

Q When he arrived, who else was in the apartment?

A Joe Valverde.

Q So it was just you, Piper and Joe Valverde in the apartment?

A That's right.

Q Tell us what conversation you recall.

A Well, we talked about a number of things. As I said, I had not seen him for a long time. We talked about a story that he had written. Gene was a struggling writer and I would always try to give him help, at least my critical comments on whatever he was doing.

So by and large for the hour or so that he was there, we discussed his short story and what I thought of it, whether I thought it was good, whether I thought it was bad,

how I thought it could be improved. Discussion of that nature.

Q Did you introduce Mr. Piper to Mr. Valverde?

A When?

Q That day, when he came into the apartment?

A He knows Joe Valverde.

Q Oh. Did he know him through you; did you introduce him?

A Yes.

Q Was he engaged --

THE COURT: What is the answer?

THE WITNESS: Yes.

Q How long before?

A A group of people, I don't recall the time when they met.

Q Had Mr. Piper on other occasions met with you and Mr. Valverde when you and Mr. Valverde were in New York?

A Mr. Piper, as I recall, didn't really care for Joe that much. He didn't -- we probably didn't meet together, no. Except socially in a larger group of six or seven people for drinks or something of that nature.

Q Did you ever have occasion before February 14, 1975 to meet with Mr. Piper together with Mr. Valverde at the Regency Hotel?

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MR. MC CARTHY: Judge, I have to object. I do not really see the relevancy.

THE COURT: Overruled.

MR. MC CARTHY: Your Honor, may I have a continuing objection to this cross examination?

THE COURT: No, I think you better object. Go ahead.

Q You understand the question, don't you? Did you ever meet with Mr. Piper together with Mr. Valverde at the Regency Hotel?

A No.

Q You are sure of that?

A Yes. I don't recall it.

Q To your knowledge, did Mr. Valverde have any business relationship with Mr. Piper of any kind?

A No.

Q Mr. Piper did not work for Mr. Valverde in any capacity at all?

A No.

Q On this first occasion that Mr. Piper came to the apartment, did you go out to lunch with him?

A Not when he came to the apartment, after he came to the apartment we went out to lunch.

Q Do you remember the restaurant you went to, did you

56a

go to Allen's?

A Yes, I went to Allen's Restaurant.

Q Correct me if I am wrong, but you didn't testify to that during your direct examination, did you?

A No, I didn't.

Q During that first meeting --

A I'm sorry, I think I did say we went out to lunch.

THE COURT: Let me just check that. Okay, you went out to lunch. You testified before that Piper was in the apartment from about 11 to 12:15?

THE WITNESS: Right.

THE COURT: Are you saying now that you went out to lunch, the three of you, at about 12:15?

THE WITNESS: 12:15, 12:30, yes.

THE COURT: When you later said that Piper entered the apartment at 4 p.m., were you coming back from lunch?

THE WITNESS: No.

THE COURT: Okay. Go ahead, Mr. Giuliani.

Where is Allen's Restaurant?

THE WITNESS: That's at 73rd and Third Avenue, New York City.

Q So that between 12:15 and 12:30 you and Valverde and Piper went from 63rd Street and approximately Third Avenue -- is that where the apartment is?

57a

A That's right.

Q -- to 73rd Street and Third Avenue?

A Yes. That's right

Q To Allen's Restaurant?

A Yes, we walked.

Q And you had lunch?

A That's right.

Q Can you tell us what time your lunch ended?

A I can't exactly, no. It lasted approximately an hour, a little over an hour.

Q So that would make it 1:30, a quarter to 2?

A That sounds right.

Q Well --

A It seemed to me it was longer than that. It sounds more like 12:15 when we finished. I recall there were not too many people in the restaurant.

THE COURT: You do not mean 12:15?

THE WITNESS: 2:15. It was more like 2:15 or 2:30 by the time we left.

Q When Mr. Piper left you after you had lunch, did he tell you where he was going?

A No, he didn't.

THE COURT: Let's get it. What happened at the end of lunch? Did you break up?

58a

THE WITNESS: We all walked out.

THE COURT: Three ways, two ways or how many ways?

THE WITNESS: Two ways. Mr. Valverde and I walked down Third Avenue back towards his apartment, and Gene Pino didn't accompany us, so he went somewhere else. I saw him crossing over Third Avenue and headed west.

THE COURT: You are saying he did not say where he was going?

THE WITNESS: No. He said he had to meet some people.

THE COURT: Go ahead.

Q Did he mention the names of the people that he had to meet?

A No, he didn't.

Q Did he mention the name Steve?

A No, he didn't.

Q Did he tell you that he would see you later?

A No, he didn't. No.

Q Did he tell Mr. Valverde that, that he would see him later?

A No.

Q Yet within one hour and a half to two hours he returned to the apartment and saw you and Valverde; is that right?

59a

A Yes.

Q When he walked in the door the second time, which you put at approximately 3:30 --

A 4, I said.

Q -- 4, what did he say to you when he walked in?

A He said, "Oh, hi. I'm down in the area, and I thought I could make some calls from here."

I said, "Sure, come on in."

Q Was he carrying anything when he walked in?

A On that occasion? Yes. He was carrying his portfolio, his models' portfolio.

Q Was he carrying a manila envelope?

A I don't recall. I recall him carrying one the first time he came. He was also carrying a box of photographs of some kind but that was also for purposes of his modeling. I recall him carrying a manila envelope the first time he came but not -- I just don't remember what he had with him.

THE COURT: When you say "models' portfolio," what do you mean?

THE WITNESS: It is sort of a leather case that zips around the side, the kind models have with their photographs, photographs of the carrier in the case.

THE COURT: Does he do modeling?

THE WITNESS: Yes, or he did then.

60a

THE COURT: Okay.

Q The second time he came to the apartment, you do not recall his carrying a manila folder, however?

A No, I don't. I think he had the same bundle of things he had with him the first time. I just don't remember.

Q Tell us everything you remember his saying, your saying and Valverde saying when he came into this apartment on the second time.

A Well, as I have stated, on the second visit to the apartment we really had no conversation of any kind. His main reason seemed to me in being there was to use our phone. I knew he didn't have much money, so I knew that made sense.

And also it was cold out so he would have had to call from phone booths and what-not on the street. His main concern was, "Do you mind if I make some calls." He went to the bathroom.

I said, "Listen, what are you doing later?"

He said, "I really don't know, I have to be back because my girlfriend is coming back from work."

It was so trivial, I have no reason to remember.

Q Did he have any conversation with Mr. Valverde that you overheard?

A No. No, I didn't. People were walking around going in the other rooms, going to the bathroom. It was not

61a

-- there were no conversations.

Q When you say people were walking about, you mean --

A I mean us three.

Q Others?

A No.

Q Not just Mr. Piper went to the bathroom?

A No, each of us went to the bathroom, I think. I recall people standing up, stretching. It was, you know, just general movement, you know, around the -- around mainly the living room. I recall going to the bathroom. I think Joe -- I think Gene went to the back to make a telephone call, you know, various things like that.

Q Did you go into the bathroom or bedroom area?

A I went to -- there are two bathrooms. One is on the corridor and one is on the main bedroom. I used the bathroom in the corridor once.

Q Did Mr. Valverde do the same?

A I don't recall. I think he did. I'm not sure.

Q So that you were not always sitting in the living room during the period of time that Piper was in the apartment?

A We were except when one of us would get up to go to the bathroom or something like that.

Q In order to go to the bathroom, you have to walk

62a

past the front door, don't you?

A Yes. Well, you walk through a foyer area.

Q Did Mr. Piper hand any money to you or to Mr. Valverde when he was in the apartment on that occasion?

A No.

Q Or to put it more specifically, did he hand you $10,000 that was later found secreted in what I will have marked as Government's Exhibit 1 for identification?

xx (Government's Exhibit 1 marked for identification.)

Q I will show you what has been marked as Government's Exhibit 1 for identification --

A I said he didn't give me any money.

Q Do you mind if I identify it for the record, Mr. Glasser?

A Sure.

Q Thank you.

Government's Exhibit 1 for identification, which is a book known as Glory And The Lightning by Taylor Caldwell, and attached to it are $10,000 in $100 bills. I should add previously recorded serial numbered bills.

Do you recall Mr. Piper handing you or Mr. Valverde $100 bills stacked similar to that?

A For the third time, I didn't.

63a

Q Excuse me for the repetition.

A That's quite all right.

Q Have you ever seen this book before?

A No, I have not.

Q Did you have occasion to ever go into Mr. Valverde's bedroom?

A No.

Q Did there ever come a time when Mr. Piper, instead of handing that money to you or Mr. Valverde, may have placed it somewhere?

A Yes. It is conceivable.

Q I didn't ask you if it was conceivable. Did you see that?

A No.

Q Once again, Mr. Glasser, what was the reason Piper gave you for coming back to your apartment some 45 minutes after he had just left you having lunch?

A Well, first of all it was not 45 minutes.

Q It was an hour ago?

A It was more than an hour.

Q An hour and a half?

A Okay. He said his basic reason was he was in the area, stopping by again, could he make some telephone calls.

Q While he was in the apartment and he was about to

leave, did you see him in possession of a manila envelope at that time?

A I told you when he came into the apartment on the second time I don't recall exactly whether he did or whether he didn't.

Q When he was leaving, did he have a manila envelope in his hand?

A I don't remember.

Q Isn't it a fact that you handed him a manila envelope?

A I would have remembered it if I had.

Q You are saying you didn't?

A That's right.

Q Did Mr. Valverde hand him a manila envelope?

A No.

Q Did you see him take a manila envelope from anywhere inside the apartment?

A No, I didn't.

Q When he left the apartment, did you say good-bye to him?

A Sure.

Q Did you walk him to the door?

A No.

Q Did Mr. Valverde?

65a

A Let me see. I really don't recall.

Q You don't recall if Mr. Valverde walked him to the door?

A I don't recall exactly who walked him to the door or whether he walked there alone or how he got there.

Q You may have?

A I said I don't know.

Q When he left the apartment, you say he was not carrying a manila envelope?

A I said I don't know.

Q You saw him walk out, didn't you?

A I didn't see everything he had on him.

Q What did you see?

A I saw him leave.

Q What did you see him carrying when he left?

A I just told you I don't recall exactly what I saw him with. I said I saw him -- I said I do recall seeing him with his modeling portfolio. What else he had, I don't recall, if anything. I think I said also before that he had a box of photographs. But that's all I recall.

Q How big was the box of photographs?

A It must have been about -- I don't know, I really don't remember.

THE COURT: Is that something different from the

66a

portfolio?

THE WITNESS: Yes. He had showed it to me the first time he came to the apartment, so I recall seeing him with it again.

Q During this time when you were in the apartment that we have been calling the second occasion, you say the stereo was on?

A Yes.

Q In order to be heard over the stereo you had to talk a little more loudly than normal, didn't you?

A I said it was not on loudly.

Q And you just talked, it is your testimony, in normal conversational tones?

A Yes, there was no need to speak more -- any louder than normal.

Q Was there any conversation you recall in the hallway area, the area you would have to cross through in order to go back to the bathroom?

A No, I said we were all seated in the living room except for such times that someone would go into the bathroom to use the toilet or whatever.

Q I'm sorry, Mr. Glasser, I thought you testified before that there was a lot of walking about.

A I said we would move, you know, around in the livin

room area, around the couch area. 67a

Q You are quite certain now that all the movement that took place took place in the living room?

A Yes, I said from time to time someone would leave the living room, walk into the back rooms where the bathrooms were.

Q Was there any conversation that took place in the hallway area between you and Mr. Piper or between Mr. Valentine and Mr. Piper, between anyone?

A No, I don't recall any. It would have been very hard to have one because there was no place to sit in the hallway area, whereas there were couches where one could. Any exchanges of pleasantries or conversations, as I said he was only there for five minutes. We were seated by and large on the sofas.

THE COURT: Did he use the phone?

THE WITNESS: Yes.

THE COURT: Where was the phone?

THE WITNESS: There were two phones. There was a phone in the living room and one in the bedroom, and I think he used both phones on different times, Mr. Piper, that is.

THE COURT: Wait a minute. You were seated exchanging pleasantries?

THE WITNESS: Yes.

THE COURT: This went on for 15 to 20 minutes, right?

THE WITNESS: Yes, that's right.

THE COURT: And he made calls both in the living room and in the bedroom, right?

THE WITNESS: That's right. That's right.

Q Tell us about the telephone call that he made in the living room. Who did he call, what did he say, what do you remember?

A I don't recall what he said, who he called or exactly when during that 15-minute period he did call.

THE COURT: How do you know he was calling in the bedroom?

THE WITNESS: He walked back there and I think I tried to use the phone and it was the same line and, therefore, I got a busy. I also heard him --

THE COURT: You got a busy?

THE WITNESS: I mean I picked it up and it was occupied, so I put it down. I also heard him talking in the back room so he must have been using it. There was no one else back there.

THE COURT: Which bedroom was that?

THE WITNESS: I couldn't tell you.

THE COURT: Were there two bedrooms?

69a

THE WITNESS: Yes, there were two bedrooms.

THE COURT: One Mr. Valverde's, right?

THE WITNESS: I beg your pardon?

THE COURT: How many people lived in that apartment?

THE WITNESS: Just two.

THE COURT: Who?

THE WITNESS: Mr. Valverde and his wife.

THE COURT: All right. Were you a guest staying there, and overnight guest?

THE WITNESS: That's right, that's right.

THE COURT: Did Mr. Valverde and his wife share one bedroom?

THE WITNESS: Yes, they would share the master -- the main bedroom.

THE COURT: Then you would have a guest bedroom?

THE WITNESS: That's right.

THE COURT: Where was the phone?

THE WITNESS: It seems to me the phone was in the main bedroom, but I really don't know. I don't recall there being a phone in my room. I'm not the person to ask about that.

THE COURT: So you were making a phone call or trying to make a phone call while you say Mr. Piper was making a phone call?

70a

THE WITNESS: Yes, I think I remember that, but I think the real reason I knew he was making a phone call was because I heard him -- I think I heard him, you know, saying something from the -- from the back at the time I went to the bathroom. I overheard him speaking in the other room. But I really don't remember well. I know he made some calls from the living room.

THE COURT: How many calls did he make in this 15 or 20-minute period?

THE WITNESS: Gee, I don't know. Because we were making calls as well.

THE COURT: Who was making the calls?

THE WITNESS: Well, I made a call. I think I tried to call someone. Joe made some calls. I don't remember if it was all during this 15-minute period. I quite frankly just don't remember. The phone was being used. That's why I say we weren't really having a conversation.

Q Mr. Glasser, you say that the reason that you knew that Mr. Piper was on the telephone was because you could hear him while you were in the bathroom, was it?

A Yes.

Q You could hear him talking on the telephone?

A I think I did. I think I heard him speaking from the bedroom.

Q But then you also walked back to the living room and then picked up the telephone and heard him on the telephone?

A I think I recall that. I mean, I'm not sure of it. Just trying to remember the best I can.

Q If you heard him talking on the telephone while you were in the bathroom, why did you go in the living room and pick up the telephone?

A Who said I did that right after I came from the bathroom?

Q I see. That was reversed, you first picked up the telephone, heard him talking on the telephone, then went into the bathroom and heard him talking on the telephone; is that right?

A We were there for a period of some 20 minutes.

Q It seems to be an awfully long time.

THE COURT: Let's not argue. Just ask your questions.

Q You were there for 20 minutes and tell us the sequence in which that occurred.

A I don't remember.

Q You don't recall?

A I don't recall.

Q There was at least, from what I can gather, four or

72a

five trips through the hallway area to go from the living room to the bathroom-bedroom area by you, at least one or two, by Mr. Piper, two or three, by Mr. Valverde, you told us; is that right?

A Yes. I don't really recall exactly who went or what times or what sequence. I'm afraid my memory is not that good.

Q And Mr. Piper entered through that area and left through that area?

A You mean leaving the apartment?

Q That's right.

A He left which area?

Q To come in through the apartment, he had to go through the hallway and to leave he had to go through the hallway?

A There's no hallway in front of the front door.

Q He had to walk through the area in front of the front door obviously to come in and go out; is that right?

A I guess so, yes.

Q Was there any conversation that took place in that area?

A No.

Q You are absolutely sure of that?

A Except a good-bye. Assuming somebody had come in

73a

through the doc[illegible]ich I said I don't remember.

THE COURT: I thought you said there was a corridor. There is a foyer.

THE WITNESS: There's a foyer which opens both onto a corridor and onto the living room.

THE COURT: So there is a hall or a corridor, right?

THE WITNESS: There is a corridor in the apartment, right.

Q Did any conversation take place in that area?

A No. Not that I remember.

Q Are you certain of that?

A I'm just telling you not that I remember. I don't remember any conversations being there.

Q After Mr. Piper walked out of the apartment, approximately how long after that did he call you?

A It is very difficult to say. It must have been an hour or so. Maybe less than an hour.

Q Tell us what you recall he said to you and you said to him.

A I don't recall very much of it at all. I never quite understood the call. It was quite short and I think I invited him. I said, "Listen, if you are not doing anything, stop by, you know, have a drink. We are going to watch the news." Something of that nature.

74a

Q When he said to you at the very beginning of that conversation, "Hello, Joe, listen this is Gene," and you said, "Hi, Sam here," and he said, "Yeah," and you said --

MR. MC CARTHY: Objection, your Honor.

THE COURT: What is the objection?

MR. MC CARTHY: Judge, Mr. Glasser said that he does not remember the conversation.

THE COURT: Have you got a tape?

MR. GIULIANI: I have a tape, your Honor, and they have a copy of that tape.

THE COURT: Is that what you are referring to?

MR. GIULIANI: I am reading from the transcript that I made of that tape.

MR. MC CARTHY: May we have a copy of the transcript, your Honor? We were never provided it.

MR. GIULIANI: They have a copy of the tape.

THE COURT: Give them what you are using.

MR. GIULIANI: I only have one copy.

THE COURT: Get a copy, get it Xeroxed.

MR. GIULIANI: Your Honor, they have had the tape recording for a month and a half.

THE COURT: It does not make a difference. Just give them the transcript, okay?

MR. GIULIANI: All right, your Honor.

(Recess) 75a

MR. GIULIANI: Your Honor, I have given a copy of the transcript of both conversations that I will be referring to to defense counsel. And I will hand your Honor a copy of it first. Then I will hand you the second when I get to it.

THE COURT: How about for my clerk?

MR. ROTHBLATT: Your Honor, may we suggest that since we have just read the Government's copy that we do not in any way concede that this is a true and accurate transcript of that conversation.

THE COURT: What corrections do you suggest?

MR. ROTHBLATT: Well, we have one, your Honor, and possibly. In the middle of the paper where it says, "Piper: I met him downtown at" --

THE COURT: Let's have it marked as a Government's exhibit for identification.

xx (Government's Exhibit 2 marked for identification.)

THE COURT: Now, this Government's Exhibit 2 is a transcript of the one telephone call, right? All right. Now, you go ahead.

MR. ROTHBLATT: Yes, your Honor.

In the middle of the page there is a statement by Piper. Then it is followed by a response by Glasser, in

76a

which Glasser says, "Right." We do not concede that that is what the tape reflects.

THE COURT: What do you say it reflects?

MR. GIULIANI: Your Honor, I am not going to offer that part of it. Maybe I can avoid having to resolve this now. The only part that I am interested in is from where it says, "Glasser: Hello," through about one-third of the page down to, "Glasser: "Yeah." That is the only part I am going to question about.

MR. ROTHBLATT: Your Honor, if that is not being offered, obviously we will not argue.

THE COURT: If that becomes important at a later point, we will take care of any correction.

MR. ROTHBLATT: Very good.

MR. GIULIANI: I should just state for the record that is a preliminary draft and if they have any recommendations they have to offer, we will make them.

THE COURT: Okay. Where do we go?

BY MR. GIULIANI:

Q Mr. Glasser, now that you have had an opportunity to read the transcript from the point that I am talking about where you say, "Hello," Mr. Piper says, "Hello, Joe, listen, this is Gene," and you say, "Ah, hi, Sam here," and then Mr. Piper says, "Yeah, I ah," and you say, "How are you doing?"

77a

and Piper says, "I got ah ... ah, the guy liked it, there's -- there's a small problem ah, I, you know, the half," and you say, "Yeah."

A I must not have that, I'm sorry.

MR. BRENNER: You gave him the second conversation by mistake.

Q I will show you 2 for identification to read it so you will look at the same thing I am looking at. If you first read from the first "Glasser" to "Yeah," to yourself.

When you said, "Yeah," in response to what he was saying what did you understand him to mean about "the half," the half of what?

A I really don't recall. Gene's in the habit of sort of starting conversations out of nowhere and I was not particularly interested in talking to him. Quite frankly, I don't remember exactly what he was referring to. I don't really remember him saying that. I was saying yeah to sort of end it.

Q So you are saying that you have no recollection of what you thought he was referring to and you are not sure of what he was referring to?

A No. I mean, the only thing I suppose that could have flashed through my mind was that it might have related to the story we were discussing earlier that day.

Q Now, in the wine business, do you refer to a measurement of wine in kilograms or in quarts and gallons and half gallons?

A It depends for what purpose we are referring to wines.

Q Do you use kilogram quantities that you measure wines in kilogram quantities or isn't it more common to measure it in quarts and gallons?

A It is in this country, yes.

Q He was not referring to wine for any reason, was he?

A You will have to ask him.

Q As far as you know?

A No. I wouldn't think so.

MR. GIULIANI: Let me hand to your Honor the transcript of the second conversation that took place on that day.

Q Preliminary to questioning you about that, Mr Glasser, let me ask you, after this first conversation with Mr. Piper, he called back again; is that correct?

A I recall -- I think he called a couple of times, maybe three times, three or four times.

Q Did he call back on a second occasion in which he asked to talk to Joe?

A I really don't remember.

THE COURT: Let's get this. Is this another transcript? Shouldn't we have it marked for identification?

MR. GIULIANI: Yes, your Honor, we will have it marked as 3 for identification. It is a transcript of a second conversation, this time involving Valverde as well as Glasser and Piper.

xxx (Government's Exhibit 3 marked for identification.)

Q I direct your attention to 3 for identification, the portion in which you were involved from Valverde saying, "Ah, talk to Sam," through the end of the second page. Just read that to yourself.

MR. ROTHBLATT: Again, your Honor, we contend that the transcript that has been marked for identification in our judgment is not a true and accurate transcript of what was heard on the tapes.

THE COURT: It may very well not be. Now, it is just a matter of getting your corrections and anybody is entitled to correct this at any time they can do so, and you have the tape and I am sure the facilities for playing and comparing this. I assume that you must have made some notes as to what you think the conversation said.

MR. ROTHBLATT: Yes, we have, your Honor.

THE COURT: All right. So do you have any

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corrections for this that you want to suggest to the Government, Government's Exhibit 3?

MR. MC CARTHY: Judge, I would also like to know, before he answers, that we had made requests for a transcript as the Government viewed it of these alleged conversations. We were informed that that transcript is not going to be forthcoming until approximately a week or two before trial. We understood and we accepted that. So, therefore, we did not prepare to meet with this type of issue here.

THE COURT: I do not know why that was told you, but I am not going to exclude the transcripts from the trial I mean, from this hearing. I think they are relevant. The only thing I can do is to make sure that you have a fair opportunity to correct the material, and if you have your notes or you want to at the lunch hour listen to the tapes again, or whatever you need to do, I will let you do. But that is all I can say.

MR. MC CARTHY: Judge, the only thing I wanted to make clear is we were not accepting this transcript as being an accurate representation.

THE COURT: I think that is clear. Even on its face it says, "Made by Giuliano on one review of tape."

Now, I do not accept this, I just accept it subject to correction and that is about all one can say.

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MR. ROTHBLATT: Your Honor, I think, addressed a question to me as to what portion of the transcript do we dispute.

THE COURT: Okay.

MR. ROTHBLATT: On the second page, your Honor, there is the third -- you have Piper, Glasser, Glasser, the second response by Glasser.

"He just said the guy would be a thousand," from our listening to the tape, your Honor, we cannot detect any such remark from Glasser.

THE COURT: If it is relevant for this hearing, I will just hear it this afternoon.

MR. ROTHBLATT: We would suggest that, your Honor.

THE COURT: We can arrange that. Better bring up a recorder.

MR. GIULIANI: Your Honor, we have a tape here. We can do it as soon as we take a recess.

THE COURT: Go ahead.

Q Mr. Glasser, during this, do you recall a telephone conversation or telephone call from Mr. Piper where he first got you on the phone and asked you to talk to Joe and then you put Mr. Valverde on the phone?

A Independent of this transcript or anything I have heard subsequently, you mean?

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Q Yes. Do you recall that occurring?

THE COURT: Do you have a recollection, whether it is refreshed by looking at this piece of paper or not? What is your present recollection?

A I cannot say I really remember it, no. I recall, as I have said, you know, that he called three or four times and they were very short conversations and I didn't know what he was really talking about and I was not really interested. Therefore, I would try to end them just by sort of agreeing with him throughout. If he was talking about anything, it would have been an attempt, I thought -- an attempt to carry on the discussion that we had had during his first visit to the apartment, as I have stated, when we were discussing about a short story which may have involved some of these things.

Q Do you recall Mr. Piper saying to you on the telephone any time that day, "I think the guy's going to be a thousand short. Is that okay? I mean, he said he'd make it up to me, um," and he said it is a question of what you guys want to do. If not uh -- it will be a little later.

Do you recall Mr. Piper at any time on February 11, 1975, saying to you the following:

"Ah, I think the guy's going to be a thousand short. Is that okay? I mean, he said he'd make it up to me um. It's

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a question of what you guys want to do. If not uh -- it be -- it will be a little later."

And you said to him, "Ah, would you hold on for a second?"

A No, I really don't recall that. If I said hold on for a second, I don't know, I was speaking to Joe, I was asking for a cigarette, I was doing something. I really don't recall these conversations, quite frankly. But to the extent that they were as you have, you know, as these transcripts represent them to be, I can only recall that it was sort of a vague and highly inarticulate attempt by Pinter to resume a conversation that we had had the first time that day. I was getting sort of bored by it at that time.

Q You were bored?

A That's why I was not trying to talk to him, I was not trying to carry on any conversations with him.

Q When he said this about the guy's going to be a thousand short, you say you were bored?

A No, that's not what I said.

Q I'm sorry, I thought you did.

A I was referring to the whole conversation. As I said, he called more than these two times. You have transcripts referring to two conversations apparently. There were several conversations that day. I don't know if these

84a

were, you know, among them or if they were not.

Q Do you recall saying to him, "Our only question is, are there any problems up there?"

A Yes, I recall something of that nature, only insofar as it seemed to me continuing with these conversational gambits and, you know, trying again and again to speak to me and I would just sign off by saying yes, yes. Finally it seemed something was going on. Quite frankly, that's why I said, "Is everything all right with you up there?" I presume when I said "up there," I was referring to his apartment, since I presumed he was calling from there. And he sounded nervous.

Q Mr. Glasser, tell me why you presume --

THE COURT: Let him finish. We have got a lot of noise from this courtyard and I think we will have to close these windows.

Let's have the last thing on the record.

(Record read.)

Q When you say you presumed that he was calling from his apartment, didn't he tell you when you had lunch that he was going to meet some people?

A That's right, that was approximately four hours earlier, you recall.

Q This telephone conversation was at 4:30?

85 a

A I don't know.

Q You don't know the time?

A No.

Q When you said, "Okay, go ahead," what were you telling him to ahead with, Mr. Glasser?

A Carry on in the sense of just sort of carry on with whatever you are doing.

Q Then when you said to him, "Now, what we gonna wait for you here or what?"

A What am I supposed to have said?

Q According to the transcript, it says that you said "that we're going to wait for you here."

A I'm going to wait for you here?

Q That's right.

A What else did the transcript say prior to that? I'm sorry, I don't understand that. It seems out of context

Q I'll read to you from it. You say, "Our only question is, are there any serious problems up there?"

A I have explained that, yes.

Q And Piper said, "Ah no."

And you said, "Okay, go ahead."

And Piper said, "Okay."

And you said, "Now, what we gonna wait for you here or what?"

86 a

A It doesn't sound like me.

Q You are saying you didn't say that?

A Well, I don't say --

MR. GIULIANI: Your Honor, could we play that tape?

THE COURT: Sure.

MR. MC CARTHY: Judge, may I respectfully note an objection to this just briefly. It seems to me what the Government is trying to do is trying to circumvent the rule of Simmons v. U.S. What they are obviously going to do is by eliciting answers to the questions, that I respectfully submit are not relevant for the purposes of the hearing that we are holding today, they are going to attempt to use that in some manner, shape or form on the trial. Perhaps not on the direct case but by eliciting these statements today and dedicating part of this hearing to issues that have to go to the substance of guilt or innocence, they are going to use that in cross examination, and it seems to me, and I respectfully submit, Simmons v. U.S. precludes that.

THE COURT: What do you mean? If they should not use it on cross, they would not be permitted to use it on cross. But it seems to me that we have a hearing and since one of the elements of the background of the arrest and the search allegedly is the taped conversations, then it seems to me that the contents of the taped conversations are

relevant. 87a

You are contending that the taped conversations were of such a nature that they themselves should be suppressed? I have got to know about the taped conversations.

Now, your objection is to questioning about the intent of what was said in the taped conversations. So the witness has not objected to answering that. All right.

The only objection I would consider to be some objection -- the question is really irrelevant to the present proceeding, and so far this is the first objection on that. As far as the tapes are concerned, is it not?

MR. MC CARTHY: It is, Judge. I would make the objection and I would ask that Mr. Giuliani be precluded from questioning on the contents --

THE COURT: Why is it irrelevant?

MR. MC CARTHY: The only question, it seems to me, with respect to the tapes whether or not there was consent to the recording of that conversation. That has to do with matters extraneous to the contents of the conversation.

THE COURT: The tapes themselves are relevant as providing some of the background for the arrest, isn't that right?

MR. MC CARTHY: That's correct, Judge.

THE COURT: So the tapes themselves certainly are

admitted, admissible for the purpose of this hearing, right?

MR. MC CARTHY: Judge, that is correct.

THE COURT: Okay. For the reasons we have just mentioned. Now, do you object to questioning of Mr. Glasser about interpretation of the tapes?

MR. MC CARTHY: Absolutely, Judge.

THE COURT: What is the ground for that objection?

MR. MC CARTHY: Judge, I respectfully submit that the question of his interpretation of the tapes goes to the question of guilt or innocence, not to the question of consent or an interception of those tapes.. It certainly does not go to the question of probable cause, because that would have to be established in Mr. Glasser's mind, it would be established from the circumstances preceding the arrest. Although the conversation may be relevant to the question of probable cause, certainly his interpretation of the conversation is not relevant for that purpose.

THE COURT: How about credibility on this hearing?

MR. MC CARTHY: Judge, I respectfully submit that within your Honor's discretion this, under the circumstances that the Government, I respectfully submit, is trying to circumvent Simmons v. U.S.

THE COURT: Nobody is going to circumvent the rule of Simmons v. U.S. We have a suppression hearing. We have

got issues relating to this suppression hearing, including the issue of Mr. Glasser's credibility in respect to his version of the events.

Now, I have got to have enough material to intelligently decide the issues on the suppression hearing and that is all I am concerned with at the present moment.

Let me turn to you, Mr. Giuliani. It does not seem to me that it is terribly helpful to have his interpretation of the tapes. So what? Except possibly as it bears on credibility. The tapes are going to be in, they are going to be considered by me on the suppression motion, and, after all, the Government heard the tapes and I guess they heard those before the arrest, but they did not hear Mr. Glasser's private interpretation of the workings of his mind. So why do I need to hear the workings of his mind?

MR. GIULIANI: Your Honor, the tapes were in fact referred to and summarized in the affidavit before the magistrate. Therefore, are an integral part of the probable cause, No. 1.

THE COURT: The tapes are certainly a part of the whole picture. How about questions of what was going on in Glasser's mind, why is that relevant?

MR. GIULIANI: We have not gotten to that stage yet. The reason I was playing this tape for him was he

he did not say certain things that are on that transcript.

THE COURT: You are now questioning him about what was meant by this or that statement and that is the specific part of the objection I am now considering. Right, Mr. McCarthy?

MR. MC CARTHY: That is correct, your Honor.

THE COURT: Okay. And you have got an objection to that.

MR. GIULIANI: I think what is reasonably meant by something that is said on a tape recording to people, for instance, who are engaged in narcotics traffic, as an example if they had referred to shirts or they had referred to stuff or they had referred to something like that, we would be entitled to ask him what that meant, and agents would be entitled to testify as to what that ordinarily means --

THE COURT: The agents can testify.

MR. GIULIANI: We are entitled to probe not only his credibility, which I think we are entitled to probe by asking him what these words meant when he said them, that were also later interpreted by the agents and by the magistrate, but we are certainly entitled to ask him if they meant anything in the particular business that we alleged he was engaged in, which was the trafficking of cocaine. A thousand short, for instance, is a very common phrase used

in the sale of cocaine.

THE COURT: The Government can testify as to what it understood to be the meaning of these tapes, and I think there are questions of credibility, but I tend to agree with Mr. McCarthy. I think we have got the tapes. We can get testimony from the Government as to what they meant to do when they heard them, and what it meant to the Government when it took the actions about the arrest and the search, but I suppose we ought to be involved here in getting the kind of discovery proceeding about the ultimate questions of guilt or innocence.

So I will sustain this objection. Let's get the tapes down accurately and I will be happy to hear the tapes. You have got the material and let's do that and we will not have any more questions about what was going on in Mr. Glasser's mind when he made these statements. Okay?

MR. GIULIANI: Your Honor, one of the things though I would like to bring your attention before you decide on that, is contentions that these conversations by Piper made absolutely no sense. That is what he said. I think that that statement --

THE COURT: That is a matter of reading the tapes and I think you are repeatedly mischaracterizing his testimony. He did not say they made no sense.

MR. GIULIANI: Your Honor, he said that Piper was just saying things that had no meaning to him.

THE COURT: Is Mr. Flannery taking notes?

MR. FLANNERY: Your Honor, a short time ago he said these things -- he said yes, yes, I want to get them off the phone.

THE COURT: There is a difference than saying that they didn't make sense. I do not recall him saying this morning that these conversations made no sense. Let's not have any more discussion. If you want to play the tapes, let's play them and at least we will be able to see if there are any corrections that should be made in the tapes. The tapes themselves are obviously important.

Is this the first conversation?

MR. GIULIANI: This is the first conversation.

Can we have this marked?

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xxx (Government's Exhibit 4 marked for identification.)

MR. GIULIANI: Your Honor, Government's Exhibit 4 for identification is a cassette marked, "Two phone calls from Piper to Glasser, and Valverde,recorded, 2/14/75. It is a copy of an original."

I should note, your Honor, we are playing the first tape recording, your Honor, which is 2 for identification.

(Tapes played.)

THE COURT: I must say that part that was objected to in the middle of the page, that "Yeah," sounded like "Yeah" to me. I would so find.

MR. ROTHBLATT: It sounded like it but it does not necessarily have to be Mr. Glasser who said it.

THE COURT: Let's go on.

(Tapes played.)

THE COURT: I wonder if you could play the second tape over, the part that is --

MR. GIULIANI: The background, your Honor?

THE COURT: At the top of page 2 where Glasser is supposed to have said to someone in the room, "He just said the guy would be a thousand short," I just --

MR. GIULIANI: Do you want me to move it up, your Honor? I would have to play that right next to you, your

Honor.

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THE COURT: All right.

(Tape played.)

THE COURT: The only part I question is something that I am sure can be reproduced in some way because they are words, but it just is not audible to me sitting here right now and that is the passage I mentioned before at the top of page 2, Government's Exhibit 3, where Glasser is supposed to have said to someone in the room, "He just said the guy would be a thousand short."

MR. GIULIANI: I think we can replay that with better equipment and other phones.

THE COURT: I think you can probably get whatever the words were audible, but I am sure for present purpose that is not crucial.

Why don't we go on with another question.

BY MR. GIULIANI:

Q Does that refresh your recollection now having listened to the tape recording of the conversation reproduced on 3 for identification?

A I'm afraid it does not.

Q It does not?

A No, not really.

THE COURT: We have got the tapes.

Q Now, there came a time that Mr. Piper returned to the apartment after these two telephone calls; is that correct?

A Apparently, yes.

Q Do you recall him returning a third time to the apartment?

A I have stated that he returned a third time.

Q Approximately what time did he return?

A About 5:30.

Q Let me just ask you this: You say he returned around 5:30. Approximately how long was he in there before the agents came in?

A Five, six minutes. I really don't know. A very short time.

Q When he walked into the apartment on this third occasion, Mr. Valverde was there and you were there?

A That's right.

Q What did he say to you and what did you say to him?

A I have already stated it.

Q Could you tell me again?

A I beg your pardon?

Q Could you tell me what you said to him?

A Do I have to go through the whole thing again? Okay. He said, "I've been busted," whereupon I said, 'For

what?"

And he said, "For having cocaine," or coke. I think he said "coke."

As I explained, he was very distraught and anxious. I sat him down on the couch in the living room, tried to calm him down and tried to find out what happened and I remember him saying, in response to my question, "Did you have a lot with you," he said, "It doesn't make any difference, everybody is involved."

And I said, "What do you mean everybody is involved, what are you talking about?"

And he said, "Well, everybody is involved, you Joe are involved as well."

I said, "What do you mean," and he said, "Well, because they have the tapes --" I could barely understand what he was saying -- and I said, "What tapes?"

And he said, "Tapes of conversations I made here."

And I said, "So what," not recalling, you know, any specific conversations.

And I said, "How do you know they have the tapes?"

And he said, "They forced me to call you, they made me call you, they took me into the car after they arrested me, to a phone booth, one of the agents went in the booth with me and gave me a dime and forced me to call you at the

apartment."

And he said, "If I didn't call, I had to call or else, and if I didn't call I was going to face a long prison term, they threatened me, they forced me to call you."

I said, "That's all right." I didn't see any problem with that. I said, "We'll have to get in touch with your father," etc., etc., you know, "and everything will be all right."

Then he said, "Look, you don't understand, everybody is involved, there are agents around the building, in the hallway," etc.

Q Is that it?

A Yes, that's it.

Q Did Mr. Valverde say anything during this conversation?

A Not really, no. He was listening to my questioning.

Q Did you and Mr. Valverdo at any time during this third occasion on which Mr. Piper came in go into the bedroom?

A No. I have testified I wasn't in the bedroom that day.

Q You were not in the bedroom at all at any time that day?

A No, I don't recall being there, no.

Q Are you positive of that?

A I've said I didn't go in there.

Q Are you positive of that?

A Yes. Otherwise I would say maybe I did, maybe I didn't.

Q How was it that you can be so sure you never went into the bedroom on that day?

A I had no reason to go in there. It is where Jo's private things were. I had no reason to go in there.

Q Did you and Mr. Valverde go back into the bathroom while Piper was in the apartment on this third occasion?

A No. I think at one time when I was trying to calm down Gene I pulled Joe aside and I said, "We have to do something, we should call somebody for Gene." That's the only conversation I recall having.

Q Where did you and Valverde go to have that conversation?

A Right in the living room.

Q It is your testimony then that you never at any time, while Piper was there on this third occasion, walked back to the bathroom or the bedroom?

A That's right, Mr. Giuliani.

Q Did Mr. Valverde go back there alone?

A I don't recall.

Q When you say you don't recall, do you mean --

A I don't remember whether he did or didn't. I don't think he did.

Q And approximately how long was Piper in the apartment on this third occasion?

A I've just told you, he was there seven, eight minutes before the agents arrived.

Q They came into the apartment at approximately 5:40. You said he came in at approximately 5:30. Is that about right?

A Are you telling me they came in at 5:40?

Q I am asking you.

A I told you they came in six, seven, eight minutes after he was there. I testified he came in around 5:30. That would put it about 5:38, 5:40, yes.

Q You say they held you there about two and a half hours?

A That's right, until about 8:15 or so when we were taken to headquarters.

Q Would it refresh your recollection that the logs at DA headquarters show they had you heading back at 57th Street, their headquarters, at 7:07?

A It would be a big surprise. In fact I recall I was aware -- I was looking to see if my watch was working.

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Q Do you recall the first agent you saw?

A No.

Q You do recall they were wearing badges?

A Around two or three were wearing badges.

Q Gold badges?

A I don't recall.

Q Did it have U.S. written on it?

A I don't recall. I wasn't that close.

Q Where were you when the agents came into the apartment?

A I was in the hallway -- I was on the next to the wall furthest from the front door on the couch. I would have to draw you a diagram. I was opposite the door.

Q In the living room?

A In the living room.

Q When they came in with their guns drawn and three of them had badges on, what did they say?

A They didn't have their badges on where you are indicating. A couple had badges on their belts. I didn't see that until later, not when they came in. I saw them with their guns drawn when they came in.

Q What did they say?

A They didn't say anything really. What did they say right then or later?

102a

Q Right then.

A They didn't say anything.

Q What did they do?

A I have testified they placed handcuffs on me.

Q Where did they put you with the handcuffs on you?

A They placed me on one of the couches in the living room.

Q Did they at any time advise you of your right to remain silent?

A Yes, they did.

Q Did they tell you you had a right to remain silent?

A I just said they --

Q I would like to go through those rights. Did they tell you you had a right to remain silent?

A Yes.

Q Did they tell you anything you said can be used against you?

A I don't recall.

Q Did they tell you you had a right to counsel?

A They gave me what I accepted being the normal instructions or advice, whatever. I don't recall each one.

Q Did you tell them you were a lawyer?

A No. I think one of them said, "Aha, this is the lawyer."

Q They knew you were a lawyer?

A Apparently they did.

Q Do you remember who said that?

A Nope, I don't.

Q "Nope" means no?

A That's right, that's what it means.

Q Did they basically say the same things to Mr. Valverde, what you accepted as Constitutional warnings?

A I don't know.

Q You don't recall?

A No, I don't.

Q Did you indicate to them you understand those rights?

A Yes.

Q And did that take place after they had put the handcuffs on you and sat you down?

A Yes.

Q During the period of time that they were in that apartment from approximately 5:30 or 5:40 until whenever time they took you out, did you ever leave the living room area?

A Yes.

Q Where did you go?

A Into the foyer.

Q Were you taken out?

A No, I was lead over there on occasion.

Q Were you taken into the other area of the apartment, where --

A I told you the only place was the foyer, which lead onto the foyer.

Q The answer is no, you were not --

THE COURT: We are repeating the same thing.

MR. GIULIANI: Your Honor, that is highly relevant.

THE COURT: Do not interrupt me. I have sat here this morning and I have heard the same thing on certain points four or five times. You listen to the witness. If he tells you something, do not ask him the same questions again. If he says, "Nope," you and I know it means no, we understand English and we can get on with this. We will be here all week if we do not.

Q You say you heard conversations in the bedroom area; is that right?

A That's right.

Q While you were in the living room?

A While I was in the foyer area, and while I was seated next to the kitchen.

Q What did you hear?

A I overheard voices.

Q You do not know what they were saying?

A No, I don't know what they were saying.

Q Did you ever see the agents with any money in their possession?

A Yes.

Q You did?

A Yes.

Q When did you see that?

A One of the agents proffered me -- it couldn't have been more than ten or fifteen bills and asked me whether or not they were mine. That was the only time. Apart from taking the money out of my pocket when I was arrested.

Q What kind of bills did he show you?

A Hundreds, twenties, mixed.

Q Where did they come from?

A I haven't the faintest idea. He asked me if they were mine and I said no, they weren't mine.

Q Did you ever see any of the agents with a large stack of $100 bills?

A No.

Q Did any of them ever say to you that they had found a large sum of money in the bedroom?

A Did any agent ever say to me that he found a large stack of money in the bedroom?

Q Yes, sir.

A No, they never said that, no.

Q So that by the time you left that apartment of your own personal knowledge, you don't know whether they seized any money in that apartment?

A Any money?

Q That is right, or found any money?

A They obviously found some or else they took the money they showed me out of their own pocket.

Q I show you what has been marked as Government's Exhibit 1 for identification. When you say they showed you a stack of money was it a stock of money like that?

A No.

Q It was much smaller?

A Ten, fifteen bills would be smaller, wouldn't it?

Q Yes, it would.

Did they show you -- strike that.

Did they ever tell you, any of the agents ever indicate to you that they were calling the United States Attorney's Office in order to obtain a search warrant for that apartment?

A No. No, they didn't.

Q Did you overhear any telephone calls like that.

A No, I overheard no telephone calls like that.

MR. GIULIANI: May I have this marked as the next Government's exhibit.

(Government's Exhibit 5 marked for identification.)

MR. GIULIANI: May I have this marked as 6.

(Government's Exhibit 6 marked for identification.)

MR. GIULIANI: May I have this marked as 7.

(Government's Exhibit 7 marked for identification.)

Q I show you what has been marked Government's Exhibit 5 for identification, which is a plastic envelope encasing a larger group of smaller plastic envelopes, and ask you if at any time while you were in that apartment on February 1, 1975, you saw plastic envelopes like this?

A No.

Q You did not?

A No, I did not.

Q I show you what has been marked as Government's Exhibit 6 for identification and ask you if you can identify it and recognize it?

A No, I don't recognize it nor can I identify it.

MR. GIULIANI: Let the record reflect 6 for identification is a gun, a Walther 380.

Q You did not see that in the apartment?

A No.

Q Exhibit 7 is a similar gun with a case for it. Did you see that in the apartment?

A No.

MR. GIULIANI: May I have this marked as the next Government exhibit.

(Government's Exhibit 8 marked for identification.)

MR. GIULIANI: Could I have the paper in the middle marked as 8-A.

(Government's Exhibit 8-A marked for identification.)

Q Mr. Glasser, you said that the agents asked you for identification?

A That's right.

Q Where did you take the identification from?

A I took it from my briefcase. They took it from my briefcase.

Q Did you point them to your briefcase?

A Yes.

Q What did they take out as identification?

A They took out a wallet which had three or four licenses, real estate licenses, things of that nature and like

my passport which was enclosed in a black leather case.

Q I show you 8 for identification and ask you if you can identify it. Can you identify it?

A Identify it as what?

Q What is 8 for identification?

A This is my passport. It's been removed from the black leather case.

MR. GIULIANI: May I have this marked as Government's Exhibit 9 for identification.

A This is not what was withdrawn from my briefcase let the record state.

(Government's Exhibit 9 marked for identification.)

Q I show you what has been marked as 9 for identification and ask you if that is the black leather case you are referring to and the passport you are referring to?

A And this is the passport which was removed from the alligator case.

THE COURT: I am not clear.

THE WITNESS: There are two passports here. This is 9.

THE COURT: You say two passports. Government's Exhibit 9 was the one in the black case you referred to?

THE WITNESS: Yes, that is the one which was

withdrawn from my briefcase. 110a

THE COURT: Go ahead, Mr. Giuliani.

Q And 8 for identification, is that also your passport?

A It is a passport which I had reported lost approximately a year ago, yes. I reported it lost approximately October 1, 1973.

Q This passport, do you know where this was located in the apartment?

A No, I don't.

MR. GIULIANI: May I have this marked as Government's Exhibit 10 for identification.

xxx (Government's Exhibit 10 marked for identification.)

Q I show you what has been marked as 10 for identification.

MR. GIULIANI: I will state for the record that 10 for identification was seized in the bedroom by Assistant United States Attorney Fortuin with 8 for identification inside it which contained inside that 8-A for identification.

THE COURT: 10 is the alligator attache case?

MR. GIULIANI: Alligator attache case which was found pursuant to the warrant by Assistant United States Attorney Fortuin in Valverde's bedroom and inside 10 for

identification, among other things was 8 for identification and what has been marked as 8, and inside 8 was 8-A for identification.

THE COURT: Is Mr. Fortuin going to testify?

MR. GIULIANI: Yes, he is.

Q I show you 8 for identification once again and ask you when was the last time you saw it?

A The last time I saw it was the last time I used it prior to October 1973.

Q Have you ever seen 10 for identification before?

A Yes.

Q Can you tell us who it belongs to?

A It is an attache case belonging to Joseph V Iverdi.

Q I show you the contents of 8 for identification, this piece of paper marked 8-A for identification and ask you if you recognize that?

A No, I do not.

Q Do you recognize the handwriting?

A No.

THE COURT: 8 is the passport, right?

MR. GIULIANI: With Mr. Glasser's picture inside of it.

THE COURT: What was found inside of --

MR. GIULIANI: 8-A for identification, which is

four pages with writing on it.

Q Do you recognize the handwriting?

A No.

Q You are saying the last time you saw that passport was a year ago?

A That's right, that's what I said. It is passport 8, not passport 9.

MR. GIULIANI: Your Honor, I will hand you a copy of 8-A for identification, the pieces of paper. I have a Xerox copy.

THE COURT: Shouldn't you be offering things into evidence for the purpose of this hearing and then they will be objected to or not so we have a clear record?

Right now we have got a lot of things for identification.

Now you offer --

MR. GIULIANI: Your Honor, 1 for identification is the $10,000 with the book.

THE COURT: Any objection for the purposes of this hearing?

MR. MC CARTHY: No objection on behalf of Mr. Glasser.

MR. ROTHBLATT: Your Honor, perhaps to expedite it all, since these are the items that we are moving to

suppress, we might have them all marked as exhibits for the purpose of this hearing.

THE COURT: I think that is what we are basically doing but I would like to take them one at a time.

MR. ROTHBLATT: We have no objection to them being marked for the purpose of this hearing.

THE COURT: Do you have any objection to any of the exhibits thus far marked for identification?

MR. ROTHBLATT: No, your Honor.

MR. MC CARTHY: No, your Honor.

THE COURT: So that is 1 for identification, 2 for identification, 3 for identification, 4 for identification, 5, 6, 7, 8, 8-A, 9 and 10. I think that does it.

xxx (Government's Exhibits 1 through 10, including 8-A received in evidence.)

MR. GIULIANI: May I have this marked as Government's Exhibit 11 for identification.

xxx (Government's Exhibit 11 marked for identification.)

Q I show you, Mr. Glasser, what has been marked as Government's Exhibit 11 for identification, which is four pages with the heading on top, "Biscayne Chemical Laboratories Incorporated." Do you recognize that?

A No, I do not.

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Q You have never seen this before?

A No.

MR. BRENNER: Your Honor, may we see that?

THE COURT: Yes.

(Handed)

MR. ROTHBLATT: Your Honor, I might say this is the first time this has been called to our attention. In previous discussion for discovery we never saw that.

THE COURT: All right, you look at it.

MR. FLANNERY: Your Honor, that is absolutely incorrect. I think the record should be straight on this, your Honor, because it is an important piece of evidence.

THE COURT: Are you objecting to it?

MR. ROTHBLATT: No, your Honor.

THE COURT: There is no objection. It is just a comment.

Are you offering 11?

MR. GIULIANI: Yes, your Honor.

THE COURT: 11 is received.

(Government's Exhibit 11 received in evidence.)

xxx

Q During the time that you were in the apartment on February 14, 1975, did you at any time detect the odor of ether or any kind of strange odor?

A No.

Q Have you ever been in Mr. Valverde's bedroom?

A Yes, I think I have.

Q While you were in the apartment or even during the time you were taken out of the apartment in the presence of the agents, did they ever indicate to you or in conversation among themselves whether they had seized or found any guns in that apartment?

A No. There would be occasional excited exclamation when the groups of agents would get together and whisper.

Q Could you make out what they were saying?

A No. It looks as though they were surprised to see something.

Q Again, restricting yourself to the question, did they ever indicate to you --

A I'm answering you as best as I can. They never indicated to me they never seized anything. I'm just saying what I saw.

MR. GIULIANI: I have no further questions.

THE COURT: Anything else, Mr. McCarthy?

MR. MC CARTHY: I just have a few brief questions.

REDIRECT EXAMINATION

BY MR. MC CARTHY:

Q Mr. Glasser, you testified that on the second occasion when Mr. Piper was in the apartment on February 14,

that you were making some phone calls. Whom were you calling?

A Well, I tried to get in touch with my wife. I tried to call my sister. I tried to call Jack Jolis. I tried to call a number of people.

Q What is your sister's name?

A Ann Martindale.

Q Who is Mr. Jack Jolis?

A He is an old friend of mine.

Q You stated also on cross examination that Government's Exhibit 8, the passport, was reported lost by you; is that correct?

A I beg your pardon?

Q Government's Exhibit 8, the passport was reported lost by you?

A Right.

Q When was it reported lost by you, if you can recall?

A October '73.

Q Between October '73 and February 14, 1975, did you see Government's Exhibit 8?

A No.

Q Did you ever see Government's Exhibit 8-A?

A Yes, prior to when I reported it lost.

Q I'm sorry, I could not hear it.

A I saw it until I lost it.

THE COURT: He is asking about 8-A.

A You mean the enclosure?

Q Yes.

A No, I have never seen this. I have seen a copy of it, but I haven't seen it.

Q You stated also on cross examination that one of the agents exhibited money to you; is that correct, while you were in the apartment on February 14?

A Right.

Q Do you remember which agent it was who exhibited the money to you?

A I think if I saw him again I would recognize him.

Q Did you touch any of the money when he proffered it to you?

A Yes. It was given to me to take, to look at or something, so I took it.

Q Had you seen where he obtained that money?

A No, I had not.

MR. MC CARTHY: I have no other questions.

MR. ROTHBLATT: I have one question.

RECROSS EXAMINATION

BY MR. ROTHBLATT:

Q When the agents entered the apartment, was Piper at the door?

A Yes.

Q And did they knock him down or did they leave him alone? How did they enter when they entered the apartment?

A They stormed into the apartment and knocked him off balance and he staggered back into the living room.

Q Where were you and Valverde?

A We were towards the back of the living room, furthest away from the door.

MR. ROTHBLATT: I have no further questions.

THE COURT: You may step down, Mr. Glasser.

Who is the next witness?

MR. MC CARTHY: Richard McManus.

Your Honor, Mr. McManus has been waiting all morning and he went to get something to eat. I would therefore call John Woram to the stand.

J O H N W O R A M, called as a witness by the defendant Glasser, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MC CARTHY:

Q Mr. Woram, what is your occupation?

A I am a recording engineer.

Q For approximately how many years have you been a recording engineer?

A Since 1959.

Q Would you please give the Court your educational background? Did you graduate from high school?

A Yes, graduated from high school --

MR. ROTHBLATT: Your Honor, may we have that tape recorder removed. It blocks the face of the witness.

THE COURT: Sure.

Q Did you go to any other school after high school?

A Yes, I'm a graduate of RCA Institute Advanced Electronics Course.

Q Would you tell the Court what you were taught at RCA Institute?

A It is essentially a four-year engineering program only without the liberal arts subjects. So, in the course of two and a half years it is a technical education equivalent to an electrical engineering degree but without the degree.

Q After you graduated from the RCA Institute, what did you do then?

A I wanted to get into the recording business and I took a job in an engineering firm for Alexander Sikorsky, the helicopter man, until in '59 I got my first job in recording, in RCA.

Q What was your position at RCA?

A I started off in the Quality Control Department and

ended up in the recording divis . .

Q Did you have a title at the time you were with RCA?

A My title when I left was recording engineer. I was just one of many. When I went to Vanguard Records, which was on my leaving RCA, I was chief engineer there.

Q How long were you with RCA?

A Twelve years.

Q You state you went to Vanguard. Is that Vanguard Records?

A Yes.

Q How long were you at Vanguard Records?

A Two years.

Q What was your position at Vanguard Records?

A There I was chief engineer.

Q When did you leave Vanguard Records?

A Two years ago.

Q And what had you been doing for the last two years?

A I left Vanguard and formed my own company, and I'm doing a combination of things, free-lance recording, teaching writing, consulting on studio construction.

Q What are you teaching?

A I'm teaching at the Institute of Audio Research fulltime and that is a technical school for would-be recording people.

Q What do you teach there?

A Recording technology, microphone theory and so on.

Q Have you taught elsewhere?

A Yes, I have.

Q Where else have you taught?

A Brigham Young University, New York University, Syracuse University.

Q What subjects did you teach at each of those universities?

A All relate to the technology of recording.

Q Have you written any books?

A I'm working on one now.

Q What is that book going to refer to? What is the subject matter?

A Same thing, the technology of recording.

Q Have you edited any books?

A Yes, I've edited a book already in publication entitled, "Microphones Design and Application," published by Sideham Publishing.

Q Have you written any articles?

A I write a monthly column in DB Magazine.

Q What is "DB?"

A Decibels. It is a technical magazine for the recording field and I've also written articles in vari

hi-fi publications, stereo review, high fidelity, audio.

Q Do you belong to any engineering societies, audio engineering societies?

A Yes, I am a member of the Audio Engineer Society.

Q Do you have a position with them?

A Vice president of the Eastern Region of the society.

Q Did there come a time yesterday morning when you met Mr. Glasser and Mr. Valverde at 205 East 63rd Street?

A Yes, sir.

Q At that address did you conduct a test or experiment or demonstration?

A Yes, I did.

Q Could you please tell the Court exactly what you did and what occurred at that address?

By the way, what apartment was that?

A The apartment the test was conducted, that was 4 D.

Q Would you please tell the Court what type of test you conducted?

A The purpose of the test was to determine what if anything, a person in the hall could hear and the method of conducting the test was to set up a stereo tape recorder with two equal channels, equal but separate, and a reference microphone was placed in the room just to simply record

was going on in the room and a second microphone was placed in the hall, and they were recorded separately on separate tracks of the tape recorder and the purpose was to compare them later on an determine what sort of intelligibility there was in the hall compared to the intelligibility in the room.

Q Was Apartment 4-D furnished or did it have any carpeting on the floor?

A No. 4-D was completely stripped. No fixtures, no furniture, no electricity.

Q Would you please tell the Court exactly what tests you conducted? In other words, did you have conversations take place?

A Yes, I asked Mr. Glasser and Mr. Valverde to talk in the room, at first in a normal conversational tone and later on in a louder tone of voice, and I brought along a radio to simulate the effect of a stereo system that might be in the room at the same time and we made tests both with and without the radio.

Q Then did you have a microphone outside the apartment?

A Simultaneously outside the apartment.

Q Did you conduct a test with the radio off?

A With the radio off and also with it on. Separate tests.

Q Also, did you conduct a test -- well, did you

yourself listen at the door to determine whether a conversation would be heard?

A Yes, from time to time I would go outside and stand outside with the door closed and with the door open and try to determine what was being said.

Q Was the conversation that was taking place inside the apartment being recorded?

A Yes, it was.

Q And were the sounds which you attempted to record on the microphone outside, any sounds that were picked up, were they recorded?

A Yes, they were.

Q Do you have that equipment and the tape recordings with you today?

A Yes, I do.

MR. MC CARTHY: By the way, Judge, if you would like we could have -- I would like to play for your Honor, this afternoon --

THE COURT: Is this a good time to break now?

MR. GIULIANI: Your Honor, we would concede whatever he testifies to as far as whether it could be heard outside from inside the living room or not.

MR. MC CARTHY: Then I will get on to a couple of questions and we will have perhaps a stipulation from the

Government.

THE COURT: All right.

Q Mr. Woram, can you state with any degree of reasonable scientific certainty whether a person outside the door in the hallway of Apartment 4-D could hear a conversation taking place and understand that conversation taking place in Apartment 4-D?

A The only condition under which I could make out intelligibility was to stand outside with the door open and the conversation was speaking in a raised tone. Under any other condition the conversation was unintelligible. In fact, one time I went out and closed the door and opened it and said, would you please start talking, and they said, "We have been talking," and it was completely unintelligible.

Q Could you please tell the Court whether or not the locationof furniture and carpeting would have any affect upon the ability to hear either better or worse any conversation that took place in an apartment?

A Well, any piece of absorbent material that is put into a room will absorb some of the sound. That is one of the things we do in recording studios, to contain sound, and put as much absorbent material as possible. Rugs and drapes, anything like that would absorb whatever sound was in the room and the amount is difficult to speculate but it should

be at least ten or fifteen DB.

Q Did you yourself actually physically attempt to listen at the door while these conversations were taking place?

A I did.

Q Were you able to hear -- except when the door was open were you able to hear and understand any conversation inside the apartment?

A No. I was trying to find a place where one could so I could set my microphone there and under no condition could I make out what was being said.

MR. MC CARTHY: I have no other questions, your Honor.

THE COURT: Is the Government going to have cross?

MR. GIULIANI: Two or three questions.

THE COURT: Why don't we finish this witness before lunch then.

CROSS EXAMINATION

BY MR. GIULIANI:

Q Sir, when your test was being performed, the individuals who were speaking were Mr. Valverde and Mr. Glasser; is that correct?

A That is correct.

Q Where were they placed?

A They were in the room at the location where the couch in Apartment 5-D was.

Q That would be the living room normally?

A Yes.

Q Did all the tests take place with them talking in the living room?

A Yes.

Q Were any tests performed with them talking right near the door, in other words, the entrance, the entrance hallway area?

A Not near the door, no.

Q Had they been talking near the door, would you have been able to make out parts of their conversation, at least parts of the conversation?

A The closer they would be to me and my microphone or my ear the better I would be able to hear them.

Q But did you make any test to determine whether, if they were having a conversation, let's say, in the entrance hallway, whether you could make out at least parts of the conversation, if not the whole conversation?

A In the apartment that we were in there wasn't an entrance hallway. The door opened directly into the living room area.

Q Let's assume they were standing three or four feet

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from the door.

A If they were standing three or four feet from the door --

Q And you were standing outside the door with the door closed. Do you follow me?

A Sure.

Q And they were having a conversation. Is there any way you can tell us now whether you would be able to overhear that conversation, or parts of the conversation, let's say individual words of the conversation?

A Based on my experience at the place I would say no, I would not be able to but the tests I conducted were to determine how the intelligibility was from the other area.

MR. GIULIANI: Thank you very much.

THE COURT: Let me just get this clear. You say there was not any foyer area? When you opened the front door, what did you see?

THE WITNESS: I have a sketch of it.

THE COURT: Would you get that.

THE WITNESS: Sure.

(Handed to the Court.)

THE COURT: I think it might help to have this marked as a defense exhibit, don't you?

MR. MC CARTHY: We will offer it into evidence.

your Honor. 129a

THE COURT: All right, Defendants' Exhibit A.

(Defendants' Exhibit A marked for identification.)

THE COURT: Any objection to that?

MR. GIULIANI: Could I see it, your Honor?

THE COURT: Sure.

(Handed)

MR. GIULIANI: No objection.

THE COURT: Received.

(Defendants' Exhibit A received in evidence.)

THE COURT: So you just open onto a large single room, which I guess can be used for part dining and part living or --

THE WITNESS: The way it was laid out, I imagine this was the living area here (indicating).

THE COURT: How far were they from the door? You have a marking 25 feet from the door, where you have the couch?

THE WITNESS: Yes.

THE COURT: Was your test conducted 25 feet away

THE WITNESS: Yes, the microphone position here (indicating).

THE COURT: And they were at the couch location?

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THE WITNESS: Yes.

THE COURT: What is this door made out of?

THE WITNESS: It is a 1-3/4 inch steel door.

THE COURT: Is that a typical apartment door?

THE WITNESS: Typical.

THE COURT: About how old is this building, would you say?

THE WITNESS: I would guess about five to ten y[illegible]

THE COURT: And it is typical of the doors in th[illegible] buildings of that age?

THE WITNESS: I should say so, yes.

THE COURT: All right. Anything else for this witness?

MR. GIULIANI: I have nothing further, your Honor.

MR. MC CARTHY: May we just have a second, your Honor?

THE COURT: Sure.

The door was how thick?

THE WITNESS: 1-3/4 inches thick steel door.

THE COURT: Does it have steel plates and a [illegible] inside with some kind of stiffness?

THE WITNESS: Yes, it might have some sort of negligible substance inside.

REDIRECT EXAMINATION

BY MR. MC CARTHY:

Q Mr. Woram, if you were to put your ear to the steel doorway, would you be more able to pick up sound inside the apartment?

A You would probably pick up the sound of the water pipes in the walls. I noticed there was some noise while I was standing outside from water pipes hammering and if you put your ear to the wall -- I think you can do it here too -- you can get the same effect. You probably can pick up the vibrations of the building which, if anything, would probably distract you from what you were trying to hear.

THE COURT: I am puzzled by this because I know in my building, when I am on the way to my apartment, and our building is about twelve years old, and I think it has the same kind of door, a hollow steel door about that thickness, and I hear voices from our neighbor's apartment. I do not stand there trying to listen, but I certainly can hear them. There are girls living next door and I hear them. If they are talking, that is, and maybe they are near the kitchen near the door, but I am puzzled with the proposition that you cannot be heard through those doors. They are not particularly soundproof.

THE WITNESS: It is not a good soundproof door by

any means.

THE COURT: I hear people out by the elevator, little children, when I sit in my living room, and that must be certainly 25 feet around the corner. So, I am puzzled by this, to be frank with you.

THE WITNESS: Well, I cannot give you much in the way of detail about the construction of the building. Superficially it looked like it was well done, well built.

THE COURT: Is there any way to tell how loud the men were speaking when you were doing this work?

MR. MC CARTHY: Judge, may I respectfully interrupt and suggest if your Honor is puzzled by this, perhaps we can play the tape.

THE COURT: I think you better do that this afternoon, yes.

MR. BRENNER: Your Honor, it may take Mr. Woram a few minutes to set up.

THE COURT: We will arrange that you can have a recess. We will adjourn until 2:15.

(Luncheon recess at 1:10 p.m.)

one of the agents saw the two guns, in the litigation bag, one of them, Agent Ray pulled out the gun and looked at it.

THE COURT: What did he do after that?

MR. GIULIANI: Put it back in the bag. There was one outside the case and one inside the case. He pulled out the gun that was not in the case, looked at it and put it back in the bag.

E U G E N E S T A N T O N P I P E R, called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MC CARTHY:

Q Mr. Piper, were you arrested on February 14, 1975?

A I was.

Q And if you can recall, what time were you arrested?

A Approximately five o'clock.

Q And cany ou tell us where you were arrested?

A Third Avenue, about at 82nd or 83rd Street.

Q Prior to being arrested had you been in Apartment 5D at 205 East 63rd Street that afternoon?

A Yes.

Q How many times had you been to the apartment?

A One time prior to the arrest.

Q And approximately what time did you arrive at the apartment at that time, the first time, that you were in the apartment prior to your arrest, at what time did you arrive at the apartment?

A I believe about one o'clock.

Q How long did you remain in the apartment?

A About half an hour.

Q Did you then leave the apartment and leave the apartment house?

A I did.

Q Did you return to the apartment 5D at 205 East 63rd Street at any time between 1:30 P.M. that afternoon and 5:00 o'clock when you were arrested?

A I don't believe so, no.

Q If you can tell us, do you know the names of the persons who arrested you?

A Agent Hall and I don't know the name of the other person.

Q When you went to Apartment 5D at 1:00 o'clock that day, did AGent Hall or the other agent ride with you in the elevator?

A Not as far as I know, no. WhenI arrived I was alone.

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MR. ROTHBLATT: Excuse me, your Honor, may we suggest the signess raise his voice.

THE COURT: Can you lean forward a little bit and speak up because everybody in the room has to hear you,please.

THE WITNESS: All right.

Q Did you see eitherAgent Hall or the other agent whom you cannot identify prior to 5:00 o'clock that afternoon?

A I am not sure of the time. When I left the apartment the second time I saw Agent Hall. I don't know what time it was exactly.

Q When was the second time you were in the apartment that day?

A It was whenI left the apartment the first time. Wait a minute.

Q Mr.Piper --

A Iam trying to remember the exact order of -- I saw Agent Hall whenI left the apartment prior to my arrest.

THE COURT: May I have the answer read back, Mr.Reporter.

(Answer read.)

End 2

Q That was at 1:30 in the afternoon of February 14, is that correct?

A No, it was -- when I left the apartment the first time I was with Mr. Glasser and Mr. Valverde. I am having trouble reconstructing the exact order of --

Q Did you in fact leave the apartment a second time that day, that afternoon?

A I am trying -- I am trying to remember the answer. I left the apartment after having been there a half hour and I am not exactly sure at this time whether I saw Agent Hall at that point or not.

Q Were you in the apartment a second time that afternoon before you were arrested?

A I believe it was when I saw -- I left the apartment after having been there a half an hour, and -- I can't remember right now. It is jumbled up.

Q How many times were you in the apartment that afternoon, if you can recall?

THE COURT: I think you have asked him that several times. I would suggest if you could you go on to something else and maybe you could come back tothat a little later. Can you do that, Mr.McCarthy?

MR. MC CARTHY: Yes, your Honor.

Q Mr.Piper, when you were there between 1:00

and 1:30 on the afternoon of February 14, did you have any conversations with either Mr. Valverde or Mr. Glasser, the substance of which conversation was a question by you, "When is the next load coming in," to which someone responded "We will have a new load March 10"?

Did you have that conversation between 1:00 and 1:30?

A Yes.

THE COURT: Can I hear the question and answer, Mr. Reporter?

(Question and answer read.)

Q Mr.Piper, where were you located in the apartment when you had that conversation?

A In the living-room.

Q Where in the living-room, were you near the couch or anywhere else in the living-room?

A Near the couches.

Q Approximately how far were you away from the door to that apartment?

A I would say maybe 15 or 20 feet.

MR. MC CARTHY: Your Honor, may we have Defendants' Exhibit A in evidence, please?

THE COURT: Certainly (handing).

Q Mr. Piper, I show you Defendants' Exhibit A in

evidence and I ask you if you could mark with an X where you were located when you had that conversation. First of all, do you understand the diagram?

MR. GIULIANI: Your Honor, I am going to object to this. This is not a diagram of the apartment that he was in. It is a diagram of the apartment next door, I think.

MR. MC CARTHY: No, your Honor, it is a diagram of the apartment directly below it with the same dimensions.

THE COURT: That is what Mr. Glasser testified, it was an identical apartment, isn't that what he testified to?

MR. MC CARTHY: That's right, Judge.

THE COURT: I will overrule the objection.

Q This is the front door.

A So your question is still how far --

Q Iam askingyou, could you just mark with anX on that exhibit approximately where you were in the apartment. Would you put a "P" there next to the X, please.

Thank you.

(Witness complies.)

Q If you could also tell us, when you had that conversation in the apartment, who did you have the conversation with?

A I had the conversation with both parties, specifically Mr. Glasser.

Q Did you refer to Mr. Glasser as Joe?

A In that conversation?

Q Yes.

A I don't believe so.

Q Did you direct any of your questions to Mr. Valverde during that conversation?

A I believe I did.

Q By the way, how long was that conversation?

A I think it is hard to isolate one conversation. I was there for 20 minutes to a half an hour, and we were talking most of the time.

Q When you were arrested, did you have a conversation with Agent Hall?

A I did.

Q Did you have a conversation with the other agent who arrested you?

A Not specifically with him. He was in the car.

Q When Agent Hall arrested you, did he exhibit a badge or identification card to you?

A When I was arrested?

Q Yes, when you were arrested.

A I don't remember seeing a batch or a card.

Q Did he exhibit a weapon to you, a gun, when he placed you under arrest?

A Yes.

Q Did there come a time when you made telephone calls to the number 212-935-0773? Did there come a time when you made a telephone call to that number?

A If that is the telephone in Apartment 5D, yes.

Q How long after you were arrested did you make that telephone call?

A About 10 minutes.

Q From where did you make the telephone calls?

A From a pay telephone on Lexington Avenue -- on the southeast corner of Lexington and, I beliege, 83rd or 84th Street, something like that.

Q When you spoke to Agent Hall prior to the time you made the telephone call, did you tell him about your conversation with Mr. Glasser and Mr. Valverde?

A No.

Q Did you tell him that Mr. Glasser had given you any drugs?

A No.

Q Did you tell him that Mr. Valverde had given you any drugs?

A Yes.

Q Did there come a time when you made the telephone calls and you made telephone calls?

A What is the question?

Q Did there come a time after you were arrested that you made telephone calls?

A Yes.

Q Did Mr. Hall or Agent Hall direct you to make those telephone calls?

MR. GIULIANI: Objection, your Honor. What was said rather than a conclusion like that.

MR. MC CARTHY: I withdraw the question, your Honor.

THE COURT: I just would like to go back a minute before we get too far.

Mr. Reporter, was there a question about whether anybody had given him drugs? If you read these two or three questions.

(Record read.)

Q With respect to the telephone calls, what did Agent Hall say to you to do, if anything?

A He told me that I was in a lot of trouble and it would be in my interest to help them, to help the agents gain access to the apartment. He said they didn't need me but that he could use me, he could use my help to gain

entrance. And suggested that I call the residence, do that and get in there.

He also said that he wanted me to mention about the drugs, the specific quantities, and how much money was involved or the fact that there was money involved as well.

Q When did this conversation with Agent Hall take place?

A In the agent's car.

Q Did there come a time when you made those phone calls?

A I did.

Q Prior to the time that you made those phone calls, did they tell you they were going to tape your conversation?

A Yes.

Q What did Agent Hall say to you with respect to taping your conversation?

A He didn't say anything to me in respect to taping the conversation.

Q Did you say to him that you consented to his taping the conversation?

A He asked me if I would make the call and I said I would.

Q Did he say at the time that he asked you to make the call, did he say at that time that he was going to tape it? Did you have any objection to his taping the conversation?

MR. GIULIANI: Objection, your Honor, it is two questions. What did he say, not whether he had some kind of mental reservation.

THE COURT: I will sustain it as to form. Okay.

Q When Agent Hall suggested you make a phone call, did he tell you that he was going to tape your conversation?

THE COURT: He has already answered that.

Q Did you say to him, when he told you to make the phone call, that you would consent to his taping the conversation?

A I voiced no objection, is the best I can put it. I didn't -- I said I would do it.

Q Did there come a time later in the day when you returned to the apartment, 5D?

A Yes.

Q Did you return there with the agents?

A Yes.

Q Did you enter the apartment with the agents?

A No.

Q Did you enter the apartment before the agents?

A Yes.

Q How long --

THE COURT: Did you go up to the floor with the agents? What happened?

A I waited in the car outside. In the same car. They took me down to the apartment and waited for about 10 minutes while they -- till agents were situated wherever they were going to be, and right now I don't recall if I went up in the elevator itself alone, but I did enter alone.

Q Did there come a time when the agents entered the apartment?

A Yes.

Q How long after you entered the apartment did the agents enter the apartment?

A As far as I could recall, 10 or 15minutes.

Q Did you have a conversation with Mr. Glasser when you entered the apartment?

A I did.

Q Did you tell Mr. Glasser that you had been forced into making the phone calls?

MR. GIULIANI: Objection again, your Honor. Did he ask him what was said rather than suggest to him what was said.

THE COURT: Yes, I think youshould ask what in his words, was said.

Q Did you have a conversation with respect to making the telephone calls?

A I believe I did.

Q What did you say to him and what did he say to you?

A The thing I remember initially was I said -- I told him that I had been busted and that agents were waiting to -- when I left -- were waiting to come in and would do so, you know, whenI left.

Q Did you have any conversation with respect to the telephone calls?

A I don't remember exactly. I believe I did.

Q Would you tell us in substance if you don't remember exactly what you said to Mr. Glasser or anyone else who was present, and what you said and what they said?

A I believe I that they had taped the calls and that -- the last two cdalls I had made to them, and I believe I might have said something about other calls having been taped as well, as far as I knew.

Q Did you at any time on that afternoon, for the 10 or 15 minutes you were in the apartment before the agents entered, did you say to Mr. Glasser that they had

forced you into making the telephone call or words to that effect?

A Words to that effect, possibly yes.

Q Did there come a time when the agents entered the apartment?

A Yes.

Q Was that approximately 10 or 15 minutes after you entered the apartment?

A Yes.

Q Before they entered the apartment, did they say that they had a search warrant?

A No.

Q By the way, where were you located in the apartment when they entered?

A Right at the door.

Q How many agents entered the apartment, if you can recall?

A I believe five.

Q Did any of them have guns drawn?

A I believe so. I believe so. I was put down -- faced down on the floor immediately and I -- the memory I have is very fleeting, and I believe that there were guns drawn.

Q Did they knock you off balance as they entered

the apartment? In other words, were you struck --

MR. GIULIANI: Objection. Could he answer the question? Was he knocked off balance?

THE COURT: Right. Let's have one question at a time. Let him answer, please.

A Yes, I believe I was. I was prepared for it, but it was abrupt.

Q Did you hear any of the agents announce that they were agents of the Drug Enforcement Administration or any law enforcement agency as they entered the apartment?

A I believe so.

Q Do you know who it was who said that?

A No, I don't.

Q Did you ever see what happened to Mr. Glasser when the agents entered the apartment?

A No, I didn't.

Q How long were you in the apartment before you were removed?

A I believe it was -- I believe it was about an hour and a half.

Q If you can recall, approximately what time did you leave?

A I am going -- working on the assumption that the arrest occurred at -- the agents came in at 5:30 and I

think it was about, as far as I could remember, 7:00, when we left.

Q Did you observe the agents in the apartment at that time between 5:30 and 7:00 o'clock?

A Yes.

Q Did you see what they were doing?

A Not all of them. We were in the living-room.

Q Were you in the living-room continuously during that hour and a half?

A No, I was -- No.

Q Did they take you anywhere?

A I was brought back into one of the bedrooms.

Q If you know, which one of the bedrooms were you taken to?

A I believe it was the master bedroom.

Q What happened in the master bedroom when you were taken back there by the agents?

A Agent Hall asked me if I knew what happened to the $10,000, and I said I didn't.

Are you interested in physical proceedings or --

Q Yes, yes.

A I saw another agent who I believe was called Scotty, if I am not mistaken, was there with Agent Hall, and

I was brought back from the living-room by another agent. The agent named Scotty, I believe superficially opened a drawer or two, very quickly. Also went to the bookcase and removed a book, looking in the context of, I believe, trying to find the $10,000. The only other thing I could remember is that the agent had brought me back, I believe it was he, who held up a hand weapon.

Q Do you know Agent Gray?

A I do.

Q Did you see Agent Gray or any other agent with a duffle bag or anything of that type of bag to carry things?

A I don't remember that.

Q How long were you in the bedroom?

A I believe 10 minutes, 5 minutes, 10 minutes.

Q Then did they take you back to the living-room?

A Yes.

Q Did you remain in the living-room for the rest of your stay in the apartment?

A Yes.

Q How long after you entered the apartment did the agent takeyou back into the bedroom?

A I'm sorry?

Q How long after you entered the apartment did the

agent take you back into the bedroom?

A I would say roughly midway.

Q To about 45 minutes?

A If it took an hour and a half -- if we were there an hour and a half, I would say it is that long.

Q Did you see various agents going into the corridors, inot the bedrooms, during the entire hour and a half?

A There was traffic back and forth.

Q Did you see them huddle in conversation?

A I don't really know how to answer that. There was -- I guess there was talk amongst themselves, yes.

Q Did you observe or hear them speaking in low tones together?

A There was that current.

Q Did you hear any exclamations or statements emanating from the bedroom from time to time during the hour and a half you were there?

A Emanating from the bedroom? I'd have to say no.

Q Emanating from the corridor leading to the bedroom?

A The only -- the only thing Icould say is that there was some question as to whether or not there was a search warrant, and there was talk amongst the agents about

had it come or was it coming or something like that.

Q Did you hear at any time during the time you were in the apartment either Mr.Valverde or Mr. Glasser ask the agents if they had a search warrant?

A I believe I did.

Q What was the response, if any?

A As far as I can remember, it was that it was coming or that it was taken care of. I didn't see one physically produced at the time.

Q Did you see any agents in the living-room going through Mr. Glasser's allegator attache case?

A I believe at one point Mr. Glasser was asked what was in the case.

THE COURT: Which case is that?

THE WITNESS: The alligator bag.

MR. MC CARTHY: By the way, that is not in evidence today. That was returned to Mr. Glasser. That is not the alligator briefcase that is in evidence.

THE COURT: Let's see.

MR. MC CARTHY: There are two.

THE COURT: The attache case that Mr. Glasser referred to was being looked at for identification, was that alligator? Was that the alligator case you are talking about?

MR. MC CARTHY: That is correct, your Honor. But that is not the alligator briefcase, Government Exhibit 10.

THE COURT: You are saying he was asked what was in his own case, right?

THE WITNESS: Right.

THE COURT: All right.

Q Did you see him directing the agents to the briefcase in any manner or form?

A I am not exactly sure what you mean.

Q In other words, did they ask him for identification?

A Did they ask him for identification?

Q Yes.

A I am not exactly sure. I believe they did.

Q Was it at that time that they were directed by Mr. Glasser to the alligator briefcase, to his alligator briefcase?

A As far as I could remember, I think that is true.

Q Was Mr. Glasser in handcuffs at the time that that occurred?

A Yes.

Q Did the agents open the briefcase?

A I don't remember.

Q Did you see the agents going through the contents of the briefcase?

A I seem to remember that.

Q Do you remember which agent that was?

A I believe it was Agent Gray, if I am not mistaken.

Q Did you see him examine his passport?

A I think I remember that, yes.

Q Did youleave the apartment with both Mr. Glasser and Mr. Valverde?

A I believe we left at the same time. But, we didn't travel together.

Q Did you see any other agents leave the apartment at the time when you left the apartment?

A Well, I think if there were five agents, that some left with us and some stayed in the apartment.

Q Do you know which agents stayed in the apartment?

A I don't remember that.

Q Do you know where they were when you left the apartment? Do you know where they were located when they left the apartment?

A No.

Q Do you know who Agent Hall is, don't you?

A Yes, I do.

Q Where was Agent Hall in that hour and a half

when you were in the apartment?

A Largely in the back, the living-room -- I mean in the bedroom.

Q Approximately how much of that hour and a half did Agent Hall spend in the bedroom?

A I willsay most of the time.

Q Were there any other agents in the back of him if you know?

A Once again I am not certain exactly who, but there were -- I think there was only one agent for each of us in the living-room so it seems to me there must have been.

Q Would you say there were at least three agents -- withdrawn.

Would you say there were at least two agents in the bedroom area during most of the time that they were in the apartment between 5:30 and 7:00 o'clock that evening?

A I would say that's true.

Q Did there come a time later in the evening when you were at the Federal House of Detention, later that evening, February 14, through the early morning of February 15?

A Yes.

Q When you were at the Federal House of Detention, did you have a conversation with Mr. Glasser with respect to your telephone conversations earlier inthe day?

A Do you think you could be more specific?

Q With respect to the telephone conversations that were taped --

MR. GIULIANI: Your Honor, I would object to this.

THE COURT: Let me hear the question.

(Question read.)

THE COURT: What is the ground of the objection?

MR. GIULIANI: Your Honor, he has already testified what happened when he was asked to make the telephone call. It seems to me it is irrelevant what he said later on.

THE COURT: Overruled.

Q Did you have a conversation at that time with Mr. Glasser concerning the conversations that were previously taped?

A I believe so.

Q Would you please tell the Court what that conversation was? What did you say to Mr. Glasser and what did he say to you?

A I am not sure I remember.

Q In substance, did you again tell him -- withdrawn.

In substance did you tell him that you had been forced or made to make the telephone calls by the Drug Enforcement Administration agents?

A I think I communicated to him the fact that I really didn't feel I had any choice. I think that would be more exact.

Q Is that in fact the case, did youat the time when you made those telephone calls feel that you had no choice?

A I felt that. I have to -- I feel like it is more a question of me placing that limitation on myself than the agent placing that limitation on me. I think there is a distinction there.

Q Did youfeel as the result of the circumstances of your arrest thatyou were not able to exercise your own free will with respect to telephone calls?

THE WITNESS: Your Honor, I don't feel I can answer that in a yes or no.

THE COURT: Explain it any way you want to.

A I felt like -- well,I felt like it was time I started thinking about myself and, you know, I wanted -- I felt that if I was to cooperate, then it would be better for me. That's as close as I can come to describing it.

Q Did you make your decision based upon the fact that you were arrested?

MR.GIULIANI: Objection.

THE COURT: I think it is pretty obvious. He was arrested and it would be an important factor. Let's not belabor that. I don't mean to cut you off.

MR. MC CARTHY: Thank you, Judge.

Q In any event, Mr. Piper, at the time you were in the Federal House of Detention,you spoke to Mr. Glasser concerning those telephone conversations, did you tell him that you had been menaced by the agents or did you in substance relate that to him?

MR.GIULIANI: Objection,your Honor.

THE COURT: Overruled.

MR. GIULIANI: A conclusion like that, you might have been an --

THE COURT: He is asking what he was told by Mr Glasser. He has asked for his version and this witness is trying to remember.

Restate your question.

Q In substance did you tell Mr. Glasser thatyou had been menaced by the agents?

A I don't believe I said I was menaced, no.

Q I am not talking about that word. Do you

remember the conversation?

THE COURT: You asked him. If you don't mean that word, don't ask about that word. Ask something else.

MR. MC CARTHY: That is why I said in substance, your Honor.

Q In any event, could you in your own words tell us what you said to Mr. Glasser?

THE COURT: He has already done that. I don't want to cut you off, but it is your witness, and I have to be a little sensitive about you suggesting things to your own witness.

MR. MC CARTHY: Judge, I will respectfully submit although I called him on behalf of Mr. Glasser, I certainly don't vouch for him, and that --

THE COURT: All right.

Is there anything else you can remember, anything else you would want to tell us about whatyou said to Mr. Glasser that night at the detention center about the reasons or the circumstances of your conversation, of the taped calls?

THE WITNESS: I don't believe so, your Honor. I just felt like -- I have pretty much told you my feelings.

THE COURT: All right.

Q Have you ever discussed the facts of this case with either Mr. Giuliani or Mr.Flannery?

A Yes.

Q With whom?

A With both.

Q How many times have you discussed the facts of this case with them?

A I believe on three separate occasions.

Q Did you discuss with them the circumstances of your arrest?

A I did.

Q Did you discuss with them your conversation with Mr. Hall?

A Yes.

Q Did you see either Mr. Flannery or Mr. Giuliani taking any notes with respect to your statement to them withrespect to the circumstances of your arrest?

A I believe so.

MR. MC CARTHY: Your Honor, I would call for the production of those notes.

MR. GIULIANI: Number 1,your Honor, 3500 material by the decision of the Second Circuit doesn't apply to a suppression hearing.

Number 2, I would represent to the Court those

notes were not a verbatim account of what he said, which is what 3500 talks about, but my own scratch notes so I could question him if and when he appears here as a witness or at trial or at the grand jury for that matter.

The Government refuses to turn it over for two reasons: It doesn't apply to a suppression hearing and it is not a verbatim account as called for in the 3500. It applies to at trial, the 3500 material, and not a suppression hearing.

THE COURT: If that material would be deemed to be a statement, and if it contains something for the defense you have an obligation under Brady to produce it.

If you don't produce it, whether it is 3500 material or not, whether it produced now or at trial, if you don't produce it and you have an obligation to produce it, you ultimately lose your case.

So, I don't think it really helps the Government to be very technical on that point.

THE WITNESS: Your Honor, may I ask something?

THE COURT: Just a minute.

The question is, is it anything which has anything in it which would be of assistance in the cross-examination of this witness at this crucial hearing.

If it has, it is not going to be the end of the matter. That is all there is to it. We are just wasting time not producing it.

MR. GIULIANI: Your Honor, I don't believe I understand what your ruling is.

THE COURT: YOu have heard of Brady?

MR. GIULIANI: Of course, your Honor.

THE COURT: If there is anything that is of any substantial assistance to the defense that you got, and as I understand the case, you have a constitutional obligation to produce it to the defense at an appropriate time.

MR. GIULIANI: Your Honor, it contains only one thing which is inconsistent with what he said today, and I will represent what that is, probably more than from my memory than my notes. When he discussed it with me he told me he was in that apartment three times on February 14, 1975, not two times. He was there once at approximately 11:00 to 12:00, at which time he had a discussion with the defendants and went to lunch. He returned there around three o'clock and then he returned again around 5:30.

THE COURT: That is kind of important for the examination of this witness, I would say.

MR. GIULIANI: I am not sure if that is in my

notes, if I kept those --

THE COURT: I think you better get your notes and then we will see. YOu don't have your notes here.

MR. GIULIANI: No,your Honor.

THE COURT: You better get them. Let's go as far as we can under the present circumstances.

MR. MC CARTHY: Thank you, your Honor. May I have just a second?

THE COURT: Yes.

We will take a recess for about 10 minutes.

(Recess.)

THE COURT: Is there anything more about the notes?

MR. GIULIANI: Your Honor, I have reviewed anything on notes I had on several occasions, one when I was preparing Mr. Piper to testify at the grand jury and notes I made the other day when I discussed some further matters with him. The notes that relate to his grand jury testimony have no relation to this proceeding at all. They talk about matters that haven't even been touched on, on direct examination.

In fact, the inconsistency I thought was in the notes is not in the notes. That is my recollection what he said to me and it is not there in the notes. The

notes are completely consistent with what he testified to today.

THE COURT: The notes that were made the other day?

MR. GIULIANI: The only way in which they are different, they obviously include other matters that haven't been dealt with --

THE COURT: All right.

MR. MC CARTHY: The only thing I would like to do, Judge, those notes be produced at the time of the trial.

MR. GIULIANI: I will preserve them.

THE COURT: They will be preserved.

End 4

Q Mr. Piper, when you entered the apartment, 5D, at 5:30 on February 14, did you have any transmitting device on your person?

A No.

Q When you discussed with the agents at the time when you were arrested making phone calls, you stated you had that discussion with them in their cars, is that correct?

A Yes.

Q How many agents were in the car?

A I believe it was Agent Hall, and a driver.

End 4

Q If you can recall, were you in handcuffs at the time you were discussing this with them?

A I was.

Q When you made the telephone calls actually was Agent Hall in the telephone, physically in the telephone booth with you?

A He was outside it.

Q Where was the tape recording device?

A In the phone booth. It was placed over the telephone.

Q From the time that you first called, made the first call, to the time that you hung up on the first call, was your conversation --

MR. MC CARTHY: Withdrawn.

Q Was the tape recorder stopped?

A Not during the call, no.

Q From the first time that you placed the second call to the time that you completed the second call, was the tape recording device stopped?

A No.

MR. MC CARTHY: I have no other questions, your Honor.

THE COURT: Any questions?

MR. ROTHBLATT: Yes, your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. ROTHBLATT:

Q Mr. Piper, the evening of the day that you were arrested, were you placed in the same detention cell with Mr. Glasser and Mr. Valverde?

A No. We were together only -- I don't know what you call it, the administrative -- we were together before we were put in separate cellblocks, myself in one and Mr. Glasser and Mr. Valverde in another for the night.

Q Was there a time when you were together with Mr. Valverde and Mr. Glasser, together in one detention place, let's call it that?

A Yes.

Q Did you have occasion to tell them what took place what prompted the arrest and the agents coming into the apartment, discuss it with them, all of the circumstances that led to it?

A Yes.

Q About how much time was spent together discussing or relating what had just taken place earlier that day or earlier that evening?

A I would say initially twenty minutes or so, and then sometime the next morning.

Q During any time of that conversation did you say to either Mr. Valverde or Mr. Glasser that you were wired, that you had some kind of transmitter or bug on you?

A No.

Q You never said that?

A Never said that.

Q At any time after you were arrested, you met Agent Hall, did Agent Hall ever say --

THE COURT: He did not say he did have a transmitter.

MR. ROTHBLATT: No, that is the end of that, Judge. I am going to something else.

THE COURT: All right.

MR. ROTHBLATT: It is the end of the subject.

Q At any time when you first met Agent Hall, when you were arrested, did Agent Hall say to you that he had overheard a conversation between you and some other person in the apartment, either Mr. Glasser or Mr. Valverde earlier that afteroon? Yes or no.

A No.

Q Did he say that he heard some conversation about "a next shipment," or words or substance about a next shipment, yes or no, say that to you?

A No.

Q You say that in the apartment Agent Hall asked what happened to the $10,000; is that correct?

A Yes.

Q While you were in the apartment; is that right? And that was while you were in the master bedroom, am I correct?

A Yes.

Q I show you this package --

MR. GIULIANI: Mr. Rothblatt, this is the package with the $10,000, Exhibit 1.

MR. ROTHBLATT: I'm sorry.

Q I show you Government's Exhibit 1, that package, and specifically this book, Glory And The Lightning, by Taylor Caldwell. Did you see this book in the bedroom?

A No.

Q Did you see any agent, Hall or any agent, handle any book?

A Yes.

Q What book was he handling, do you know?

A I don't know.

MR. ROTHBLATT: May we mark this for identification, your Honor?

MR. GIULIANI: Let's mark it the next Goverament exhibit, if we may, your Honor, because we are eventually

going to put it in.

THE COURT: All right.

(Government's Exhibit 12 marked for identification.)

Q I show you this book, Founding Father, Story of Joseph P. Kennedy, by Whalen. Did you see this book in the apartment?

A No.

Q When Agent Hall asked you about the $16,000, what did you say?

A I said I didn't know.

Q While you were in the apartment for this hour and a half, approximately, did you hear any conversations by any body about finding money in the apartment?

A After Agent Hall asked me if I knew where the money was, something was mentioned, I believe, by the other agent as to how hard it would be to find it, and that was the only reference that I remember.

Q At any time did you hear any agent talk about money to Mr. Glasser?

A No. Not that I remember.

Q Would you reflect? Do you remember any conversation about, "Is this one of yours," or words or substance?

A No.

dhrm Piper-cross

Q Did Agent Hall tell you the $10,000 must be in the apartment when he was talking about the 10,000? "We've got to find it"?

A No.

Q Was there any discussion beyond asking you what happened to the $10,000? Was there any discussion about what steps should be taken to find the $10,000?

A Not with me.

Q With anybody.

A Not that I know of.

Q Did you hear any conversations about any money other than the question what happened to --

THE COURT: Repeated. Let's go on to another subject.

MR. ROTHBLATT: All right.

Q By the way, what you have testified to this afternoon, questions that were asked of you, did you ever relate these conversations to any agents or any U.S. Attorney, where a stenographic statement was taken of what took place in the apartment?

A No.

Q Was any tape recording or mechanical device ever made of your account of what took place in the apartment when the five agents entered?

A No.

Q There was no question that when you reentered the apartment before the agents came back, some ten or fifteen minutes later, you were the one who left the door open for them to enter by pre-arrangement, am I correct?

A No. Somebody was -- the door was locked, I believe. It was not left open.

Q Didn't they tell you, "You have got to help us, we are going to be coming back into the apartment;" didn't you tell them that? Didn't they tell you that?

A They said they would enter when I opened the door to leave.

Q In fact, that's when they did enter; is that correct?

A Yes.

Q And that was by pre-arrangement with Agent Hall, am I correct?

A Right.

Q That you open the door --

THE COURT: Yes, I get the point. We do not have to repeat it. It is late. Let's go on.

MR. ROTHBLATT: That is all. Thank you.

THE COURT: Does the Government have questions.

MR. GIULIANI: Just a few, your Honor.

CROSS EXAMINATION

BY MR. GIULIANI:

Q You were just asked whether you ever gave a statement to the Government, by Mr. Rothblatt, whether it was stenographically recorded. Do you remember testifying to the grand jury?

A The grand jury, yes.

THE COURT: All right.

MR. GIULIANI: I just wanted the record to be clear.

Q You also testified at one point, in the beginning of your examination, that you were in the apartment, at Mr. Valverde's apartment, on two occasions on February 14, 1975. Weren't you in fact in that apartment on three occasions?

A That's correct.

Q Was one of those occasions at approximately 11:30, 12 o'clock, during midday?

A I believe it was around midday or a little later.

Q When you arrived at that apartment at that time, was Mr. Valverde and Mr. Glasser both there?

A Yes.

Q Had you come there by pre-arrangement?

A Yes.

Q With whom?

A Mr. Glasser, I believe.

Q Was the purpose of your coming there to arrange eventually to meet with some others so that you could get cocaine from Mr. Glasser or Mr. Valverde and transfer it to another person?

A Yes.

THE COURT: Let me hear the last question and answer.

(Question and answer read.)

Q Did you remain in the apartment with them for approximately twenty minutes to a half hour on that occasion?

A Yes.

Q Then did you go with them to a restaurant named Allen's and have lunch with them?

A Yes.

Q During the course of time that you were at the apartment and later when you were at the restaurant, did you make several phone calls to the individual to whom you were going to transfer cocaine?

A Yes.

THE COURT: May I hear the last question and answer?

(Question and answer read.)

Q During the time you were in the apartment on this occasion and at the restaurant with Valverde and Glasser, did

you discuss that with them, the fact that you were going to be delivering cocaine that was to be given by them to you and delivered to a third party?

A Yes.

Q Had this been done, without telling us exactly when or how many times, was this done on other occasions by --

MR. MC CARTHY: Objection, your Honor.

THE COURT: Yes, I do not think we have to get into that. Let's stick to the suppression. I will sustain the objection.

Q When you parted from them, when you left Allen's Restaurant, did you indicate to them that you were going to see this person from whom you were going to obtain money and eventually give him cocaine?

A Yes.

Q When you parted from them, did you go in an uptown direction, did they go in a downtown direction?

A Yes.

Q Did you go to an apartment and meet with an individual named Steve?

A Yes.

Q Did that meeting take place at approximately 4:15?

A I believe so.

Q Did you have a conversation with Steve?

A Yes.

Q All right.

Again putting aside the conversation, did you receive $10,000 in cash from Steve?

A Yes.

Q Was that for cocaine that you had previously delivered to him?

A Yes.

Q And that cocaine that you had previously delivered to him, had that come from the defendants, Glasser and Valverde?

A Yes.

Q Then, after you left Steve's apartment, did you go to 205 East 63rd Street?

A Yes.

Q Did you take a cab there?

A Yes.

Q Now, when you went up to Apartment 5-D, can you tell us what you were carrying in your hands?

A I was carrying a portfolio and --

THE COURT: Wait a minute. This is when you went up at this particular time we are talking about, right?

THE WITNESS: Yes. I was carrying my portfolio.

Q This would be at approximately 4 p.m., would it not?

A Yes, I believe so.

Q Were you carrying, at that point when you entered, a manila envelope?

A No.

Q Did you also have in your possession $10,000 in cash that had been given to you by Steve?

A Yes.

Q Did you have that in your pocket or how were you carrying it?

A Yes, I had it in my pocket.

Q When you entered the apartment, was Mr. Valverde and Mr. Glasser both there?

A Yes.

Q Did you have conversations with both of them?

A Yes.

Q Without asking you everything that was said, did you during the course of that conversation use the word "Joe" in referring to Mr. Valverde?

A I'm not sure.

Q Did someone talk about a load coming in in the month or in March?

A Yes.

Q Did you hand the $10,000 in cash to anyone in the apartment?

A I handed the money to Joe.

Q That is Mr. Valverde?

A Yes.

Q When you handed it to him, what did he do with it, if you recall?

A He began to count it and one thing -- the only thing I remember is that he gave me back one bill that was torn and I gave him the other fragment to it.

Q I show you 1 in evidence. Is that approximately the size of the bills that you handed to him?

A Yes.

Q They were $100 bills?

A Yes.

Q As far as you could tell?

A Yes.

Q Did you see what he did with it? Did he put it in his pocket, did he put it in a drawer? I mean, do you recall?

A I don't recall. The last I saw, it was on the coffee table.

Q In the living room?

A Yes.

Q Did there come a time while you were in that apartment, approximately 4 p.m., that you received a manila envelope containing a plastic bag which contained a white powder?

A Yes.

Q Which you understood to be a half kilogram of cocaine?

A Yes.

Q Who handed you that manila envelope containing the cocaine?

A Nobody handed it to me. It was on a kind of an ottoman or settee.

Q Who pointed you to the ottoman?

A I don't remember exactly.

Q Was it either Mr. Glasser or Mr. Valverde?

A One of the two.

Q Did you eventually leave the apartment and head back to see Steve?

A Yes.

Q When you left the apartment, were you carrying a manila envelope containing the cocaine?

A It was in a brown lega envelope, yes.

Q A brown legal envelope?

A Yes.

Q When you went down in the elevator, was there another man in that elevator with you?

A Yes.

Q Did you later find out that that other man in the

elevator with you was Agent Jeffrey Hall?

A Yes.

Q Did he get on the elevator with you on the 5th floor?

A He was in the hall when I left and got in the elevator after I did.

Q You then went downstairs with him in the elevator, you separated from him and took a cab; is that right?

A Right.

Q Some ten blocks away you were arrested by Agent Hall and other agents of the Drug Enforcement Administration?

A Right.

Q You were found in possession of the half kilogram of cocaine at the time you were arrested; is that right?

A Yes.

Q And you have already testified about this, so we will just summarize it --

THE COURT: We do not have to have summaries. I think I can remember it.

Is there anything in addition?

Q Skipping over that, during the time that you were taken back to the apartment, and you were asked to go in before the agents went in, can you tell us approximately what time you remember that being? Was that approximately

A I believe so.

Q All right. Now, when you went in there, you told Glasser and Valverde that you had been busted; is that right?

A Yes.

Q That there were agents outside?

A Yes.

Q Did there come a time when Glasser and Valverde left you in the living room and went back to the bedroom-bathroom area?

A Yes.

Q Did they remain there for approximately seven, eight minutes, ten minutes?

A Roughly, yes, I would say.

Q Then there came a time after that when the agents came into the apartment?

A Yes.

Q And there also came a time when Agent Hall took you from the living room back to the bedroom, do you recall that?

A Yes.

Q Agent Hall asked you if you knew where the $10,000 had come from or had been put?

A Yes.

Q You told you did not?

A Right.

Q Did you tell him to whom you had given the $10,000, which of the defendants?

A I don't remember.

Q You also testified on direct examination that when you were first arrested by Agent Hall and when you were questioned about the person from whom you received the cocaine you told him you received it from Joe Valverde; is that correct?

A Right.

Q You did not mention the name Sam Glasser to them?

A No.

Q At that point.

A No.

Q After you made the first telephone conversation and you turned out to have conversations with a man named Sam and not a man named Joe, did they ask you who Sam was?

A Yes.

Q Did they ask you if Sam was involved, if he was one of the persons also involved in giving you the cocaine?

A Yes.

Q At that point did you tell them no, that he was not?

A I believe I did.

Q Did there come a time, however, before you left to be put in West Street that you told them that Sam was

involved?

A I'm not exactly sure. I believe I did.

Q That would have taken place at the apartment; is that right?

A I really don't remember that. I'm not sure.

Q Is it clear in your mind, though, that the first time you were asked, which would be before the first telephone conversation, the first time you were asked who gave you the cocaine, you told them it was Joe Valverde and not Sam Glasser; you did not mention his name?

A Right.

Q And then later on you admitted to them that Sam Glasser was also involved after Glasser ended up talking on the tape; is that right?

A Yes.

Q Was the reason for that --

MR. MC CARTHY: Objection. I withdraw the objection.

THE COURT: All right.

Q Was the reason for that because Mr. Glasser was your brother-in-law and you were trying to protect him?

MR. MC CARTHY: Objection, your Honor.

THE COURT: Overruled.

A Yes.

Q When you had these discussions with Mr. Glasser,

after you had all been arrested and you were in the Federal House of Detention, and you told him something to the effect of, that you had been forced by the agents to make these telephone calls, that in fact was not exactly what happened, you were not forced to do it, were you?

THE COURT: No, he has covered that.

MR. GIULIANI: I am trying to point out the reason why he said that, your Honor.

THE COURT: I have got some brains. In the first place, you are putting the words in his mouth I do not think he used. So I do not know why you would do that. He said he was doing it because he decided the cooperation would help him. That was his ultimate answer.

MR. GIULIANI: I asked him the same question they put to him, your Honor, with what I objected to as an improper question. The effect of which --

THE COURT: Let's pass on. We have gone into that extensively.

Q Was the reason for those statements to Mr. Glasser the fact that you were trying to justify what you had done to them?

A Yes.

Q Did there come a time while you were at West Street that Mr. Glasser particularly, but with Mr. Valverde present,

suggested to you a false explanation for their involvemen. in this transfer of cocaine?

A Yes.

Q Did they tell you that you should say that they wer not involved in this?

A Yes.

Q Did Mr. Glasser tell you that?

A Yes.

Q Was Mr. Valverde present when he told you that?

A Yes.

THE COURT: Who was it that suggested the false explanation? Who was it?

THE WITNESS: I believe it was Mr. Glasser with Mr. Valverde present.

Q Did Mr. Glasser tell you that you should say that you had traveled down to Bolivia a year ago and had met a man there --

A Brazil.

Q Brazil, about a year ago and had met a man there who could supply you with cocaine?

A Yes.

Q In fact had you traveled to Brazil a year ago?

A I did.

Q In what connection?

A To write a screen play.

Q Did Mr. Glasser further tell you that you should say that this man had come up to New York in the last couple of weeks, had contacted you and had been the source for this cocaine that you were caught with and had been selling?

THE COURT: Why are we getting into this? This all happened after. We are not trying the whole case. Can't we limit it to the issues on the suppression motion?

MR. GIULIANI: First, they questioned about the conversation and opened the door to it.

Secondly it goes to Mr. Glasser's credibility. If this is believed and he was concocting a false explanation for his involvement in the crime, it is consistent with his having concocted false testimony at this hearing

about the prior search and being shown this money.

THE COURT: All right, go on.

Q Did Mr. Glasser tell you to say that this man had contacted you within the last couple of weeks and had been the one who had supplied you with the cocaine that you were caught with and had sold?

A Yes.

Q Did he tell you that if you mentiond involvement Mr. Valverde's, they could be in a lot of trouble?

A Yes.

THE COURT: What was that?

Q Did he also tell you that if you mentioned his involvement as the source for the cocaine and Mr. Valverde's involvement they could be in a lot of trouble?

A Yes.

MR. GIULIANI: I have no further questions.

MR. MC CARTHY: Just a few questions, your Honor.

REDIRECT EXAMINATION

BY MR. MC CARTHY:

Q Mr. Piper, you testified that prior to your first telephone call to Mr.Valverdi on February 14, when you spoke with Mr. Glasser, that you had not stated that Mr. Glasser was involved in this exchange of cocaine, is that correct?

A Yes.

Q Did there come a time when you were on the phone that Mr. Glasser spoke on the telephone?

A Yes.

Q And at that time did you want to speak to Mr. Glasser?

A No.

Q Did you feel compelled by the circumstances --

THE COURT: Really, this is just a complete waste of time. You can't simply by introducing some new formula of words get into this again. I am not going to have all this.

MR. MC CARTHY: I understand that, Judge. The only point I was raising was the fact that on cross-examination they elicited the fact that he had not inculpated Mr. Glasser. If I recall correctly, that was not testified to on --

THE COURT: Are you going back to the reasons for his tape phone conversation?

MR. MC CARTHY: Just to that circumstance that at that time when he didn't want to do something he decided to go forward with that because of the circumstances that he was under at that time. I respectfully submit that would indicate he was not giving voluntary and free

consent.

THE COURT: He was under arrest, he was under a lot of pressure. It is a matter of degree. I don't think by getting any more explanations you are going to add anything.

MR. MC CARTHY: I will withdraw it then.

I have no other questions.

THE COURT: You may step down.

What other witnesses does anybody wish to put on. I think we are at the end of today, and we have got to schedule the remaining --

MR. MC CARTHY: I had one other witness who would fit in very well because he was going to be brief, but he left. He was here this morning for three hours and he left and I have to contact him again, but he will be very brief.

THE COURT: Do you have anyother witnesses?

MR. MC CARTHY: I have no other witnesses, your Honor.

THE COURT: What does the Government wish to put on?

MR. GIULIANI: Your Honor, I assumed the defense was going to call the agent, and I have him on call all day. May I talk to Mr.Flannery one minute or less?

THOMAS M. FORTUIN, called as a witness by the defendant Valverde, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. H. ROTHBLATT:

Q Mr. Fortuin, what is your present position?

A I am an Assistant United States Attorney in this District.

Q How long have you been an Assistant U. S. Attorney?

A Since October of 1974.

Q Do you recall the 14th day of February of 1975 being contacted by your office or by agents of the Drug Enforcement Administration with respect to a seizure of certain items at premises on East 63rd Street? Do you remember that occasion?

A I remember the occasion. I don't remember all -- I am not saying everything that you said in your queston. I remember that particular occasion about this search warrant that I prepared.

Q Will you tell us what happened on that date when you were contacted with respect to going to these premises?

A Yes. I met Mr. Giuliani in the hallway. I was on my way out of the building. I would say it would

be about 6.30.

He asked me if I would prepare a search warrant. I told him I didn't want to do that because I wanted to go home. He also wanted to go home. So we flipped a coin and I lost.

We then went down to Mr. Giuliani's office and he spoke on the phone I believe to Special Agent Hall and I spoke on the phone briefly to Special Agent Hall at that time.

Q Do you remember the conversation with Special Agent Hall that you had?

A I can't remember which facts I got at which time. I know that I then spoke to him again up in my office and got more facts, because I was hoping to draft the affidavit prior to the time that he arrived in my office.

Q To the best of your ability, could you relate to us the conversations that you had with him as you recall them?

A Yes. I believe it started with a man that they had originally arrested earlier in the week, whose name I don't recall at the moment.

Q By the way, Mr. Fortuin, did you make any notes or memoranda while you were having these conversations?

A Only of a very rough nature, all of which was incorporated into the search warrant.

Q Please continue.

A And that man -- I guess that would be Greenstein -- I now recall -- I recall that he had been arrested perhaps Wednesday of that week with approximately four ounces of cocaine, as I recall it, and that he had agreed to cooperate ar[illegible] they had given him $10,000 in official advance funds and he had delivered that to a person --

Q Excuse me. This is the information you received from Agent Hall, is that correct?

A By and large. I was also aware of the Greenstein arrest by virtue of being present in I think the Magistrate's part when he was arraigned.

Q My question is directed to the conversations, the information you got from Hall, conversations you had with him.

A Yes, but some of it -- I told him that I had some background knowledge on the case, the general nature.

Q Go ahead.

A That they had given him $10,000 and under the surveillance of the agents he had given this to a man by the name of Piper, who as I understood it was a model or something of that sort.

Piper was then followed to this apartment, whatever the address was, and I don't recall that, where he went inside.

THE COURT: Who went inside?

THE WITNESS: Piper went inside.

THE COURT: All right.

A Agent Hall told me that he listened at the door and he heard a conversation about "We'll be receiving a load," it was either next month or the beginning of March. I don't recall which it was. But this was late February, so that would be the beginning of March.

At that time Piper left the apartment and he was subsequently arrested away from the premises. I take it he was followed or I think I was told he was followed. At that time he did not have the $10,000 on him. He then agreed to cooperate and made a telephone call back to the apartment.

I am trying to get -- just thinking a moment. He asked, as I recall -- I can't remember whether he asked to speak to Joe and Sam and answered the phone or he asked to speak to Sam and Joe answered the phone. But in any event, one of the two of them answered the phone and he said, "I will get the other person." I believe there were two such conversations, as I recall.

At that time I do recall Agent Hall telling me that the conversation was in substance about the half, my man liked the half, or something of that sort, but he is going to come up short, I believe he'll be $1000 short, or something like this. I do recall that both Sam and Joe participated in that conversation and it was clear from the context that they knew what was going on.

Now, I then prepared the warrant on the basis of that and Agent Hall came to my --

Q You mean the affidavit in support --

A I am sorry. The affidavit and the warrant based on that.

When Agent Hall came to my office he pointed out, and he had not told me -- of course, he had had conversations with several people, he may have told Mr. Giuliani -- that when Piper was arrested a half kilogram of heroin -- of cocaine; I am sorry -- had been seized from him. I had not realized that, so that was added into the affidavit. I typed it in myself, I believe, and Hall initialed it. But it was for that reason that I described the conversations in a somewhat general way in the affidavit, because it wasn't clear to me what this conversation about theehalf referred to, not being aware when I drafted it that they had actually seized a half kilogram

from Piper.

Hall then informed me --

Q Excuse me, Mr.Fortuin. Would it help you if you got a copy of that affidavit and you looked at it?

A Yes, it would.

MR. H. ROTHBLATT: Can we use your copy, Mr. Giuliani? I am looking at mine.

THE COURT: You can use mine.

THE WITNESS: Thank you, Judge.

A Yes.

In Paragraph 7, the sentence that was added, he did have one-half kilogram of cocaine in his possession, I added that when Hall got down there.

Q In other words, you hadn't typed that entire writing yet until Hall got down, is that it?

A That's correct.

Q Continue, please.

A In any event, I went -- started to get the affidavit typed and there came a time when Special Agent Hall came to my office and I handed him the affidavit and he made that change.

Q You say he made that change. Would you describe that again? I just missed it.

A In Paragraph 7, I had not been aware that a half

k'logram of cocaine had been seized.

THE COURT: He said that four times. Can't we move on?

Q Was this affidavit prepared -- was it already prepared when Hall came or did you --

A Yes.

THE COURT: Yes, it was, and he added a sentence. He has said that three or four times.

MR. H. ROTHBLATT: I just didn't understand.

THE COURT: Let's go on.

MR. H. ROTHBLATT: I am sorry. I just didn't understand.

Q Please continue.

A Well, at that time we got the warrant and Special Agent Hall and I drove to Magistrate Jacobs' apartment, which is located on 66th Street, I believe. We went in and the Magistrate signed the warrant. I remember it was ten minutes after nine when he signed it and he put the time on the warrant.

At that time I think we had some discussion and Special Agent Hall said, "Why don't you come along on the search" because the apartment, as I recall, it was only three blocks or so from Magistrate Jacobs' apartment.

I then went with Special Agent Hall and we drove

to the apartment. I think we first drove uptown and that was a mistake, we turned around and drove downtown.

When we got there Special Agent Hall apparently knew the doorman or had explained to the doorman what was going on. We both walked in. We rode up the elevator to this apartment and knocked on the door and Special Agent Gray met us at that time.

Q I didn't get that.

A Special Agent Gray opened the door for us and let us in. I think Agent Hall announced who he was, so that Special Agent Gray would know what we were doing.

We entered the apartment and I immediately went to the left into the living room, just basically to look around, and the agents went in the back of the apartment, Special Agent Gray and Special Agent Hall. The only thing I saw in the living room was I did see a passport on the table which I opened and saw that it belonged to Mr. Valverde.

I then proceeded to the back bedroom and Special Agent Hall and Gray were in there looking around. I don't recall specifically where they were looking.

At that time Special Agent Hall -- I don't know whether he picked it up prior to my getting in there or whether he did it when I was in the bedroom -- put one or

the litigation bags on the bed and took out of it two pistols. One was in like a case and then there was one with a kind of a pointed end on it -- I really know nothing about these guns -- and put them on the bed.

I then looked around. Special Agent Gray was going through books, I believe, in the bookcase, and at that time said, "I think we've got something," or something to that effect, and produced, as I remember it, an envelope which contained hundred-dollar bills, and Special Agent Hall then counted out the money in my presence, although I really didn't pay attention. He said there was $10,000 there. I asked him if he wanted me to count it and he said no, that wasn't necessary.

Shortly thereafter Special Agent Gray found I believe another $3000 and after that another $2000 in a book.

THE COURT: Wait a minute. Gray found another 3000?

THE WITNESS: That's correct, Judge.

THE COURT: And then after that what?

THE WITNESS: I believe Gray in another book found about $2000.

Q Mr. Fortuin, would you describe in a little more detail what happened? Did he pull the books off the

shelves and say "I found money"? Did you observe him pulling the books and finding money or did he announce what he found?

A I think I did see him. Whether it was the first book -- I saw him removing some books from the shelves. Then I started looking through the books because my feeling was there might be more money and he was removing books and I was removing books. I just can't give you any more detail than that.

Q He was the one who discovered the money in the respective books, is that right, you didn't?

A That's correct. No, I didn't discover any money in any books.

Q He announced to you what he had discovered?

A That's corrrect.

Q Please continue.

A Although I did see him removing books. Now, I don't remember seeing him remove a book that contained money. I believe he was stacking them on the floor, whereas I was putting the books back in.

After that I went and I think I looked in the closets. I recall looking at the closet directly outside the bedroom and noting that there were I think two empty black litigation bags in that closet and I recall that they

smelled of a volatile substance. I did not immediately identify it. I also recall that they had initials on them and I recall that one of them had an ampersand. In other words, it indicated that it was a corporate or a legal type briefcase rather than something that belonged merely to a person.

I then proceeded back into the bedroom and I don't recall what Special Agent Hall or Special Agent Gray were doing at this time. I may also have looked in the bathroom at this time, which was largely empty, as I recall.

There was then an alligator-type attache case on the right-hand side of the dresser, which I opened, looking for money. I looked in the back of it and I noticed that there were three or four passports in the back flap portion and I looked at them because -- since I knew there were only two people involved, it seemed to me now there were more passports than there were people, which suggested to me either that there were false passports or that there were other people involved that we had not yet identified.

So I did remove one of the passports, which had certain papers in it, and I recall that that would be Mr. Glasser's passport, and I looked at it. I know I looked at the date of birth, for example, and I looked at the

200a

picture.

Q Is this the passport, Government's Exhibit 8 and was this the paper contained in there?

A That's correct, 8, and the paper that it contained was 8-A.

Let me look at this. Yes, I recall that picture in 8.

Q Would you describe to us what you did with respect to the passport, 8, and the paper, 8-A?

A When I opened it I glanced at the paper and noticed that it had metric weights and measures on it. I remember seeing a certain number of ML's for milliliters. Whether it said grams or KG for kiligrams -- I don't remember the exact notation, but I did notice that it was metric notations, which obviously stood out in my mind in that we were dealing with narcotics.

I briefly looked at it. I recall that on the first page there was some mention of acetone, which connected in my mind with the smell that I had seen.

I then opened the page and saw ether on the first page and immediately realized that the smell that I had smelled was ether and not acetone.

I then called it to the attention of I believe Special Agent Hall, who was I think lining up the exhibits

that they had seized in a drawer on the bed, and I pointed it to him and I said, "From my reading of it, it looks like this would be a formula either for refining cocaine or for refining heroin."

I had no idea which it was. I think I handed it to him.

Q That is --

A To Special Agent Hall.

Q That is, you did examine the entire contents of the paper, did you not?

A I really didn't read it in detail. I looked at it very quickly, having noticed the metric weights on it, and then also because of the chemical smell I was really concerned as to what chemical that was and how that had gotten there. Also I was interested in whether or not there was any evidence of heroin refining or anything of that sort and I thought the formula might relate to that.

Q Continue. What happened?

A I then -- I think I wandered into the other room that is back there, the other bedroom, and looked around.

I looked through the kitchen very briefly to see if there were any chemicals that would match those described in the formula, and at that time I think I left the apartment.

Q Was this the first time you ever went out on a raid pursuant to a search warrant?

A I wouldn't call it a raid.

Q Whatever it is. A search pursuant to a search warrant.

A Yes, it was.

Q When you spoke to Agent Hall in the preparation of the affidavit in support of the search warrant did you ask him whether he made any notes with reference to the information that he was giving you?

A No.

Q Did you personally listen to the tape or recording of the conversations that they recorded between the two persons in the apartment and Piper?

A I did not.

Q Would you explain this, if you would, Mr. Fortuin, I notice in Paragraph 8, the last sentence says, "Piper spoke to two persons who identified themselves as Art and Sam and had conversations."

Do you know how the name Art got into that affidavit?

A I really do not. I have no recollection of an Art in this connection.

Q There was no Art in fact?

A I have no current recollection of any Art.

Q When you arrived at the premises Agent Hall was there, is that correct?

A No. Special Agent Gray was there.

Q I beg your pardon. Special Agent Gray. I am sorry.

Roughly that was a little after 9 o'clock, am I correct?

A That would be correct.

Q Did you ask Special Agent Gray whether he had gone through any of the bags in the apartment, precisely what he searched for and precisely what he did before you arrived?

A I did not ask him at that time, no.

Q At any time that evening did you ask him that?

A I think at one point I commented that I was annoyed that they were finding all the money and I was not or something.

Q Did you ask him why they were able to find it and you were not able to find it?

A It was really a joking kind of situation, because I was looking through paper bound books and things that were at the top of the shelves and some of them were tied up and they were old recipe books and they joked that

they had had a lot more success with the volumes relating to Kennedy and things of this sort.

Q Did you ask Agent Gray whether in fact he had not found the money before and placed the money in the books that he said that he was finding in your presence?

A I never asked him that, no.

Q Did you ask him how much time he had spent in the apartment before?

A No, I didn't.

Q Did you ask him whether he had searched through those books before you arrived?

A I did not.

Q Did you ask him what effort he made to locate the $10,000 of Government money that was in the apartment?

A I am sorry. I don't understand your question.

Q You knew that there was $10,000 of Government money --

THE COURT: You are asking the same thing over and over again.

MR. H. ROTHBLATT: He said he didn't understand the question.

THE COURT: It's repetitious.

MR. H. ROTHBLATT: I am just trying to clarify the question for him, that's all.

THE COURT: Did you ask him in any form what he did before you got to the apartment?

THE WITNESS: No, I never asked him that.

THE COURT: All right.

Did he tell you in any form what he did before you got to the apartment?

THE WITNESS: I had the impression he was sitting there watching television. Now, whether he told me that or whether I inferred that because that is what I would have done, I really can't say.

Q Did you ask him, Agent Gray, if he had emptied the two litigation bags that were in the closet?

A No.

THE COURT: I suppose you could ask a hundred different details.

MR. H. ROTHBLATT: Except, your Honor, it's relevant because those bags --

THE COURT: Of course it's relevant. Mr. Fortuin has said that in no form did he tell him anything was done before he got there nor did Mr. Fortuin ask.

Let's go on to something else.

Q Did you go with the agents to DEA headquarters after this?

A No. The agents were continuing the search

when I left. I had been, frankly, invited for dinner at 8 o'clock, and by the time I left it was 10, so that they were still working when I left.

Q You had no opportunity to talk to Piper as to what occurred in the apartment, did you?

A No, I had never spoken to Mr. Piper.

THE COURT: Did you ask him any questions, did you ask Mr. Gray any questions, generally or specifically, about what he had done before you got to the apartment?

THE WITNESS: No, absolutely not.

THE COURT: All right.

Any cross?

MR. GIULIANI: Just one or two questions.

THE COURT: All right.

CROSS EXAMINATION

XX

BY MR. GIULIANI:

Q Mr. Fortuin, on Paragaph of the affidavit, you were asked how that name Art was placed there. Did you type this affidavit yourself?

A I only typed one sentence. No, it was typed by the steno pool, and I do remember having a lot of ptorblems with it, I will say that, and that's why when it came to adding the sentence in Paragraph 7 I decided it would be simpler to add it myself than to ask the stenographer because she just was not working well.

Q Would you read that paragraph to yourself, the entire Paragraph 8, please?

THE COURT: Out loud?

MR. GIULIANI: To himself.

A I read it.

Q As you recall your conversations with Agent Hall, did Agent Hall constantly refer to the two individuals as Joe and Sam?

A Yes, I remember that definitely. That's why we put the registration of the apartment to Joseph L. Valverde.

Q Do you recall Agent Hall ever using the name Art to you in any of the conversations that you had with him preparatory to preparing this affidavit?

A No, I don't.

MR. BRENNER: Your Honor, I just have one question.

MR. GIULIANI: I have just one or two more questions.

MR. BRENNER: Oh, I am sorry.

Q You said there was a small in the bedroom?

A No, that would be the litigation bags in the closet smelled.

Q And what kind of a smell was it?

A That was ether.

MR. GIULIANI: I have no further questions.

THE COURT: Anything else?

MR. BRENNER: Just one or two questions, your Honor.

CROSS EXAMINATION

BY MR. BRENNER:

Q Mr. Fortuin, when you were at the apartment, were you there as an Assistant United State- Attorney or as a member of the Drug Enforcement Administration?

MR. GIULIANI: Objection, your Honor.

THE COURT: Sustained.

MR. BRENNER: If I might make an offer of proof, your Honor --

THE COURT: You can ask him anything about the facts.

MR. BRENNER: The reason I say that, your Honor, is that the warrant is directed to any authorized agent of the Drug Enforcement Administration. Just, frankly, this second it occurred to me there might be a question of the illegality of someone other than such an agent searching the apartment. That is the only reason I asked the question.

THE COURT: You are a United States Attorney,

an Assistant?

THE WITNESS: That's correct.

MR. BRENNER: Thank you.

Q You testified that when you entered the apartment you saw a passport which turned out to be Joseph Valverde's just lying on the table?

A That was the name in it, yes.

Q You later said that you saw a passport, you found a passport that had Samuel Glasser's name with a piece of paper; that is Exhibit 8 and 8-A?

A That's correct.

Q Did you ever see the other passport of Mr. Glasser's that is Government's Exhibit 9?

A I suspect that I looked at the other passports in the attache case, but I really have no memory about that. I do remember that there were four of them.

Q Do you know whether or not that passport -- maybe I will show it to you -- was in the same place that you found Government's Exhibit 8?

A I know that there were three or four passports in the back of the alligator briefcase.

Q Where you found Exhibit 8?

A Whether or not this was one of them, I can't honestly say.

Q 8 and 8-A were in the back of that alligator bag?

A That's right.

Q But you don't know whether Government's Exhibit 9 was?

A There were other passports. Whether tha was one of them I can't say.

MR. BRENNER: Thank you.

No further questions, your Honor.

THE COURT: Thank you, Mr. Fortuin.

(Witness excused.)

THE COURT: When Mr. Hall be down?

MR. GIULIANI: He is here now.

MR. H. ROTHBLATT: Your Honor, I was just going to ask Mr. Fortuin if he can identify the bags. It was one question I overlooked to ask.

THE COURT: What do you mean to identify the bags?

MR. H. ROTHBLATT: The empty bags that he saw in the closet, that's all.

THE COURT: I think Mr. Hall will probably do that.

Mr. Hall is here?

MR. GIULIANI: Yes, he is.

THE COURT: It's nearing one o'clock. Perhaps we should start and see how far we get.

Who is examining Mr. Hall?

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J E F F R E Y R. H A L L, called as a witness in behalf of defendant Valverde, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. H. ROTHBLATT:

Q Mr. Hall, what is your business, profession, and assignment?

A I am a special agent with the Federal Drug Enforcement Administration, and I am a group supervisor in the New York Regional Office.

Q How long have you been a special agent of the Drug Enforcement Administration?

A Approximately seven years.

Q How long have you been a group supervisor?

A Approximately six months.

Q You remember February 14, 1975 when the defendants Piper, Valverde and Glasser were arrested? You remember that date?

A Yes, I do.

Q Will you tell us exactly what happened on that

date when you first observed Piper and what happened after that?

A The first time I observed Piper on that day?

Q Correct.

A First time I observed him was as he was leaving an apartment on 83rd Street.

Q Would you set the times as you describe it, approximately?

A This was approximately 3.30 p.m.

Q Go ahead.

A He was leaving the apartment of an informant, and I believe the address was 314 East 83rd Street. I am not sure of the address. I was in a Government car outside of the apartment.

I observed him leave. I remained in front of the apartment until I was joined by Agent Gray who had been up in the apartment along with Piper and the informant secreted.

Agent Gray joined me in the car, and we then conducted surveillance on Piper and followed him to 63rd Street and Third Avenue. He went via taxicab. Then I observed him get out of the taxicab on the corner. He went into the building at 205 East 63rd Street.

I went into the building behind him. He got

on an elevator in front of me. By the time I got to the elevator bank, I saw that one of the elevators had stopped on the fifth floor, and I went to the fifth floor.

Q Let me stop you here for a moment. About what time was that?

A This was approximately a quarter to four.

Q Was there a doorman on duty?

A Yes, there was.

Q Did the doorman stop and ask you where you were going?

A Yes, he did.

Q What did you say?

A I said I was waiting for a friend. I told him I was waiting for a friend who was going to visit someone in the building, and I said, "How about if I sit in one of the couches," which is in the lobby. So I walked through the door.

I was too late to get on an elevator with Piper. He had a bit of a lead on me, but I did observe where the elevator had gone to.

THE COURT: Then what did you do?

THE WITNESS: Then I went to the fifth floor, and I listened to a couple of doors, and I heard a conversation in one of the apartments, Mr. Valverde's apartment.

I believe it's 5-D. I am not sure of the number.

Q By the way, when you were listening to the door, were you writing down, making any notes of the conversations you heard?

A No, sir.

Q When for the first time did you make any notations of the conversations you heard outside 5-D?

A I don't recall. Probably a day or two or three afterwards.

Q That was after the search warrant, of course, was prepared?

A Yes, sir.

THE COURT: Yes, that would be after the search warrant.

Q Go ahead. Please continue.

A Yes, sir.

Q What happened while you were up on the fifth floor?

A I listened to parts of a conversation through a door. I believe it's 5-D, Mr. Valverde's apartment.

At the end of this conversation --

THE COURT: What did you hear?

THE WITNESS: I heard parts of a conversation. I heard certain phrases which I recall specifically, and

other parts of the conversation which I don't recall clearly.

THE COURT: What do you recall?

THE WITNESS: I recall one man asking another man when a load or a shipment was coming in. He referred to him as Joe. And I overheard the response, the date March 10th. I also overheard the words four grams. I also overheard other parts of conversations, other words, but I don't recall them at this time clearly.

Q By the way, do you have the memoranum you made of that conversation you overheard?

A Do I have it with me?

Q Do you have that memorandum?

A I did prepare one, yes. I don't have it with me.

Q Continue. Then what happened?

A From the conversation I was able to determine that one of the men was going to leave the apartment because I could hear the conversation getting closer and closer to the door. I could hear footsteps walking to the door, so I walked to the elevator, and I pressed the down button and Mr. Piper left the apartment and walked to the elevator.

I stood alongside of him for a brief period. We both entered the elevator together. We went down to

the lobby. We left the building. I went back to my car. I got in the car with Agent Gray and I saw Piper get into a cab on the corner.

Then I advised the other agents in other Government vehicles what had transpired in the apartment. We then followed the cab that Piper had gotten into north on Third Avenue, and at about Third Avenue and 82nd Street, we stopped the cab and placed Mr. Piper under arrest and seized some packages that he had been carrying under his arm, which was a half a kilo of cocaine.

Q Was there any reason why he wasn't stopped when he left the building?

A Yes, sir.

Q Or in the building?

A Yes, sir, there was.

Q What happened after you arrested Mr. Piper?

A I took Mr. Piper and placed him in the car that I had been driving, and I advised him of his constitutional rights, and I had a conversation with him regarding the source of the cocaine that we had just seized from him.

Q What did you say to him, and what did he say to you?

A Well, the first -- my best recollection is the first thing I said to him was I explained to him that he was

in a great deal of trouble, and that it would be in his best interests to cooperate with us in identifying his source of supply. And he agreed to do this. He told me that he had gotten the cocaine from a man named Joe Valverde in the apartment that he had left, and he recognized me as getting on the elevator with him.

I asked him for a physical description of Mr. Valverde, which he gave me. I asked him if there was more cocaine in the apartment, and he said that there might be, he didn't know. He told me that Valverde had come up from Florida that day. He told me that he was bringing the cocaine to a man named Steve.

I asked him if he would help us complete the case and implicate Valverde in the transaction. He agreed to do this. I asked him if he'd make a telephone call which I was going to record. He agreed to do it, and then myself and Agent Gray took Piper to a telephone booth.

Q Just let me stop you here at this point. You didn't record that conversation you just had with Piper on your tape recorder, did you?

A No.

Q You didn't make any notes of the conversation or memoranda of the conversations with Piper, did you?

A The basis of the conversation is contained in

the report that I referred to earlier.

Q No, at that time did you record a conversation you had or substance of a conversation or make any notes of a conversation you and Piper had?

A No.

Q Please continue now.

A Agent Gray placed a recorder on a pay telephone, and I am not sure of the exact location of the phone. It was on Second Avenue. I believe it was in the 60's or the 50's. And Piper made two phone calls to Valverde's apartment, which were recorded, and I stood next to him in the phone booth or alongside the phone booth when he made the calls.

Q Was it Gray and yourself who were at the location when the conversations were recorded?

A Yes. Gray was in the car. I was next to the phone booth, that's correct.

Q Then what happened?

A After the phone calls?

Q Yes.

A We took Piper over to Valverde's apartment and instructed the other agents to take a position in the stairwell near the fifth floor. After they had taken that position --

Q Excuse me. If you would, at this point, Agent Hall, would you describe in more detail how you entered the building, any conversations you had with the doorman and so forth leading up to what took place?

A Right. Well, I didn't enter the building with the other agents. I instructed the other agents to enter the building.

Q Where were you?

A I was with Piper in the car outside the building. After the agents had taken the position in the stairwell near the fifth floor, I then instructed Mr. Piper to go into the apartment. I had earlier instructed him what procedure to follow after he had gotten into the apartment.

Q What did you tell him?

A I told him to go into the apartment, and in the phone conversation I had instructed him to tell Valverde that there would be a little delay in payment for the cocaine, but he was going to receive this payment in the vicinity of Valverde's apartment, therefore to request that he could spend some time in Valverde's apartment while waiting to meet his customer and receive the payment.

And once again in the car after we arrived back at Valverde's apartment I went over the instructions again, I said, "Go up into the apartment, wait there about ten

minutes, and then tell him you are going to meet your customer, and then, when you leave the apartment, we are going to come through the door, and we are going to place Valverde and another man in the apartment that we know only as Sam" -- based upon the phone conversations which were taped, we were going to place them under arrest, and that we would also place him under arrest, simulated arrest, so that we could protect the fact that he was cooperating with us.

Q Then what happened?

THE COURT: I think there will be a little more time needed for this witness.

MR. H. ROTHBLATT: It appears that way, your Honor.

THE COURT: Let's recess until 2.15.

(Luncheon recess.)

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AFTERNOON SESSION

2:15 P.M.

MR. GIULIANI: Your Honor, over the luncheon recess we xeroxed a portion of the report prepared by Special Agent Hall.

Just for the record, I would like to identify it. It is in total a seven-page report. We xeroxed those portions, which are three pages, which relate to the testimony that he has given as it relates to this hearing, and we have supplied a copy of that to defense counsel.

THE COURT: All right, fine.

MR. GIULIANI: Under Brady.

THE COURT: Let's have that marked for identification.

(Government's Exhibit 16 was marked for identification)

MR. GIULIANI: I would request, your Honor, that at the conclusion of the hearing that be returned to me and not taken out of the courtroom or copied.

THE COURT: All right. Who is examining Mr. Hall?

MR. H. ROTHBLATT: I am, your Honor.

THE COURT: All right. Let's go.

J E F F R E Y H A L L , resumed.

DIRECT EXAMINATION CONTINUED

BY MR. H. ROTHBLATT:

Q Agent Hall, do you know where we left off?

A Could you refresh my memory, please?

Q I need it too.

THE COURT: He had given instructions to Piper as to what to do when he went back into the apartment on that 5:00 o'clock incident and he had said "Tell them you are there to wait, wait ten minutes, and then go out and say you are going to meet the customer," and then when he was coming out the agents would go in. That's where we are.

Q What happened after that?

A After giving him these instructions and after the other agents had taken a position in the stairwell Piper got out of the car, walked into the building, and I followed him into the building. I took an elevator to either the fourth or the sixth floor and went into the stairwell and met the other agents.

Q Excuse me. Did you identify yourself as a

federal agent to the doorman?

A I don't remember.

Q Continue please.

A Yes. I met with the other agents in the stairwell and they told me that Piper had gone into the apartment, one of them told me that Piper had gone into the apartment.

Then we went to the door of Apartment 5-D and we took a position immediately outside the door. I was standing right next to the door alongside the door and the other agents were lined up along the wall right next to me.

Then I listened at the door for a period of about 15 or 20 minutes.

Q Did you hear the conversations that went on then?

A I heard parts of the conversation, yes. There was very little conversation. There was mostly quiet or there may have been a TV on or something, but I didn't hear any conversation. I heard only conversation just before Piper left the apartment.

Q That is while Piper was at the door, is that it?

A Right. When he was leaving the door I heard

Piper say "Well, I got to go." As a matter of fact, I am pretty sure he said something like, "I have to go meet the cat now."

Q That's what you heard?

A Yes, that is what I heard.

Q Go ahead.

A Piper opened the door from the inside and when he did this I entered the apartment and I was followed by the other agents. I went into the living room, which is immediately to the left as you enter the apartment, and I placed Mr. Valverde under arrest. He was sitting on a couch.

Q What did you say to him?

A I said, "You are under arrest for violation of the Federal Narcotic Laws."

Q Anything else?

A Then I advised him of his constitutional rights.

Q What happened to Piper when he entered?

A Excuse me?

Q What happened to Piper when you entered? Did you knock him over?

A Knock him over?

Q Yes, or cause any physical contact with him.

A I did not. There may have been some.

Q Go ahead, continue.

A Mr. Glasser had already been placed under arrest by then.

Q Were handcuffs placed on him?

A I believe they were, yes. I advised him of his rights also.

Q Whatdid you do? Tell us what you did, physically did in the apartment.

A Tell us what I physically did in the apartment?

Q Yes.

What did you do in the apartment after you put the handcuffs on them, gave them their rights? What did you do?

A The next thing I did that I recall was I got identification from both of them.

Q You asked them for their identification?

A Asked them for their identification.

Q What did they do?

A Mr. Valverde I believe gave me a wallet to look in or maybe I took a wallet out of his pocket and Mr. Glasser directed me to a briefcase which I believe he opened up and I believe I got some identification from this briefcase from Mr. Glasser.

Q At that point you had good reason to believe

that there was $10,000 of government money in the apartment, is that right?

A Yes, I did.

Q What steps if any did you take to look for that $10,000 in government money?

A Well, I searched Mr. Glasser and Mr. Valverde's person very thoroughly. When Mr. Glasser opened up his briefcase I also looked in the briefcase for the money. I looked around the living room to see if the money had been placed somewhere in open view. These were the steps that I took to look for the money.

Q Did you go to the master bedroom?

A Yes, I did.

Q What did you do in the master bedroom?

A In the master bedroom I talked with Piper.

Q Did you look around the master bedroom to see if the $10,000 was there?

A Yes.

Q What did you do?

A I looked around the master bedroom.

Q Physically what did you do? Did you go into any drawers?

A No, sir.

Q Look at any books?

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A No.

Q Look into any closets?

A No, I -- yes, I did look in the closets, yes.

Q Open any briefcases?

A No, sir.

Q Were any briefcases opened in your presence?

A No.

Q Were any drawers opened in your presence?

A No, sir.

Q Were any books looked at in your presence?

A No, they weren't.

Q How long did you spend in the apartment before you left?

A Approximately an hour and a half.

Q During that hour and a half did you encounter any money at all? Yes or no.

A I don't recall if these defendants had small quantities of money on them or not, so I really couldn't answer that question.

Q Hundred dollar bills?

A No, sir.

Q Quantities of hundred dollar bills?

A No, sir.

Q Did you encounter any quantities of hundred dollar bills?

A No, I did not.

Q During that hour and a half did you contact any members of the U.S. Attorney's Office?

A Yes, sir.

Q Who did you contact?

A I don't recall if I contacted or if I was contacted by -- I spoke with Mr. Giuliani and I spoke with Mr. Fortuin.

Q Who did you speak to first?

A Mr. Giuliani.

Q Did you tell him what transpired?

A Yes, I did.

Q Did you tell him that there was $10,000 in government money that had to be found?

A No, I did not.

Q What facts did you relate to Mr. Giuliani?

A Well, basically the facts that I have testified to so far.

Q You mean just what you did?

A Yes.

Q And that the $10,000 of government money that you were looking for, you hadn't found it yet?

A Sir, I told him that I believed that there was $10,000 of government money somewhere in that apartment.

Q Did Mr. Giuliani instruct you what to do?

A Mr. Giuliani told me that -- yes, he did. He told me to call Mr. Fortuin in about twenty minutes.

Q And that Mr. Fortuin would handle the search warrant?

A That is correct.

Q I take it you did that, is that correct?

A Yes, I did.

Q Did you finally contact Mr. Fortuin or meet him personally?

A Yes, I did.

Q What time was that?

A That I met him personally or that I contacted him?

Q That you met him personally.

A I met him at the courthouse, here at the courthouse, at about quarter to 8:00, 7:30, quarter to 8:00.

Q In the meantime, had the three defendants, Mr. Valverde, Glasser, Piper -- were they taken out of the apartment and taken to DEA headquarters?

A Yes, sir, they had been.

Q Did you accompany them to DEA headquarters?

A No, I did not.

Q By the way, did you report your activities on your radio to your headquarters?

A Excuse me. I don't understand your question.

Q You have a radio communication or contact with headquarters, do you not?

A Yes, sir.

Q Where you communicate by radio in your car?

A Yes, sir, that is correct.

Q Do you know whether that communication is recorded by some kind of mechanical device, tape recorder or other kind of device?

A Yes, sir, it is recorded in two ways. Communications to our base radio is recorded on a computer, a computer recorder, and also a base operator records in a book, a record book of all communications from a radio car to the base.

Q Perhaps you didn't understand my question. Are your exact words that you communicate --

THE COURT: He said it was recorded.

Q It was recorded?

A Yes, it is recorded.

Q Fine. I take it those recordings are

available, are they, Agent Hall?

A Yes, they are.

Q So that all of these communications, these oral communications, are a matter of recordings --

THE COURT: Look, we don't have to have it five times.

MR. H. ROTHBLATT: If that's a fact, Judge, I am satisfied, as long as your Honor gets it.

THE COURT: All right.

Q After you left DEA headquarters, you went to this courthouse, met with Mr. Giuliani, Mr. Fortuin, is that right?

A Not after I left headquarters. After I left Valverde's apartment. I went immediately from Valverde's apartment to the courthouse. Other agents transported the defendants to the headquarters.

Q You met Mr. Fortuin here in this courthouse?

A Yes.

Q Did you have any notes of any kind of the events that took place, that had just taken place?

A No.

Q Did you then go over the search warrant or the affidavit in support of the search warrant with Mr. Fortuin?

A I then related the facts that had transpired to Mr. Fortuin and he prepared the affidavit.

Q Did he physically type it or have somebody type it?

A He had somebody type it.

Q And you then signed it at that time or did you wait until you got to the magistrate?

A I believe I signed it at the magistrate's apartment.

Q You accompanied Mr. Fortuin to the magistrate's apartment?

A Yes, sir.

Q After the magistrate signed the search warrant you and Mr. Fortuin then go back to the premises 205 East 63rd Street to execute the warrant?

A Yes.

Q Who was at the apartment when you got there?

A Agent Gray.

Q Anybody else?

A No.

Q You and Mr. Fortuin then entered the apartment, did you?

A We entered the apartment, yes.

Q Will you describe then what happened after

you entered the apartment, what you did to execute the search warrant?

A After I entered the apartment I had a conversation with Agent Gray?

Q What did you say to him?

A He told me that he had received a call from Glasser's sister. I told him that we had the search warrant and let's, you know, proceed with the search, and the three of us went into the master bedroom and we started to search.

We looked in -- you want me to detail the search?

Q Tell us what areas you did and in what order. Did you go to the dressers first or the closets first, the books next? What order did youdo your search? I don't want petty details, how many books you took down, the name of each book. Just in a general way what you did.

A I searched -- the first thing I searched, my best recollection is that I first searched one of the suitcases, one of the black -- the black leather suitcase with the initials on it. I was searching right next to Mr. Fortuin and I believe Mr. Fortuin was looking in an alligator-skin briefcase with a combination lock.

Then I looked at some --

Q What did you find in the suitcase?

A In the suitcase?

Q Yes, that you searched.

A The first suitcase that I looked in had two guns in it, which I had already discovered earlier, I had already seen earlier in the apartment. There was also some papers and documents in the briefcase which I didn't really examine closely.

Q In the same suitcase?

A Yes, sir.

Q Continue please. Then what did you do?

A Mr. Fortuin directed my attention to something that he had found. It was a passport, Glasser's passport, with a five-page handwritten chemical formula.

Q Where did he find that? Did you see where he found it?

A Yes, sir. In the alligator briefcase with the combination lock. I looked at that formula for a while. I don't remember exactly how long I looked through the other documents in the briefcase. I may have opened some drawers. I think at about the same time that I was looking at the formula Agent Gray told me that he had found some money in one of the books. Of the three packages of money that we subsequently found in these books, this

was the $2900 package.

Q Let me stop you here for a moment.

Did there come a time when Mr. Fortuin called to your attention two empty black cases, as they were described, litigation suitcases?

A Did you say two empty cases?

Q Two empty cases, yes.

A I don't recall that any of the cases were empty.

pm

Q Do you recall what was in each of the cases that you searched?

A I believe there were three black suitcases that were identical, and in one suitcase there was the guns and some documents, in one suitcase there were plastic bags which had liquid -- drops of liquid on the inside of the bags, and on the third -- in the third suitcase, my recollection is that there were documents, papers.

Q By the way, did you make notations of what you were finding as you went along in the various places?

A As I went along or --

Q Yes or at any time that evening.

A That evening there was a list made of all -- an inventory made of everything that was found and seized, and it was put on the copy of the search warrant that we left in the apartment.

Q That is the paper filed with this Court?

A Yes, sir.

Q That is the only listing of inventory that was made of what was found, is that correct?

A Yes. I didn't personally make any list.

Q Continue, please.

No empty suitcases, correct?

A I don't recall any of the suitcases being empty, no, sir.

Q Did you do anything to help search for the money, look into the books to help find the money?

A Yes, I did.

Q Did you find any money in any books?

A Yes, I did.

Q And when you found the money, where was Agent Gray? Was he near you?

A Standing right next to me. He was also looking in books.

Q Did he direct you toany books?

A Did he direct me to any books?

Q Yes, did he say, "Hey, why don't you look at this set of books or those books?" Did he give you any directions?

A No, he did not. No he didn't

Q Was there any comment made before why you were finding the money and Mr. Fortuin wasn't finding any money in the books?

A Yes, I did make a comment to Mr. Fortuin about that jokingly.

Q What did you say?

A Well, Agent Gray had found the first package

of money, which was $2900. Then he found the second package of money which was the $10,000 official government funds, and then after that, I found a package of money with approximately $3000 in it, and then Fortuin started looking in some books too, I believe, and he didn't find and money and I made a comment that he was upset because he didn't get to find any of the money.

THE COURT: Grav found the $10,000?

THE WITNESS: Yes, your Honor.

Q And you commented that --

THE COURT: Yes, he's told us.

Q -- that he was upset?

A Jokingly, yes, sir.

THE COURT: Anything further?

MR. H. ROTHBLATT: One second, your Honor.

Q Agent Hall, you signed this affidavit in support of search warrant, did you not, a nd the rider which was attached to it, copy of which I hold in my hand? I want to call your attention first to the last sentence in Paragraph 8. Would you read it over and I ask you if you read that at the time you signed the affidavit in support of the search warrant?

A I did read this document, yes, but there was an oversight in that sentence, yes, sir. There was a

mistake there.

Q So when it was written that Piper spoke to two persons who identified themselves as Art and Sam, that name "Art" was incorrect?

A Yes, sir, that's correct.

MR. H. ROTHBLATT: I have no further questions.

THE COURT: Anything else?

MR. MC CARTHY: Yes, your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. MC CARTHY:

Q Agent Hall, between the time that you left the apartment and the time that you returned with the search warrant, was there any other agent in with Agent Gray in the apartment besides Agent Gray?

A I don't think so.

Q When you returned, who were the agents who you returned with to that apartment?

A Just myself and Mr. Fortuin.

Q And when you were there, during the course of your stay there in your search, did an agent named Bobby ever arrive?

A Bobby, no.

Q Would either you or Agent Gray or Mr. Fortuin

ever referred to as Bobby during this?

A Yes

Q Which of you was that?

A I identified myself to Glasser's sister as Bobby, when she called.

Q By the way, you were there for about an hour and a half. During that period of time how much time wuld you say you spent in the master bedroom?

A I would say approximately half the time.

Q And there came a time when Mr. Piper went into the bedroom, is that correct?

A That's correct.

Q Were there any other agents in the bedroom at that time?

A During the time that Piper was in the bedroom, there were other agents in the bedroom, yes.

Q Did you see any of the other agents looking at and fingering the books on the bookcases?

A I did not.

Q Did you see any of the other agents going through the drawers in the bedroom?

A No, I did not.

Q Was there any time -- during any time that you were in the master bedroom, did you see any of the

agents going through the drawers or looking at the bookshelves?

A No, sir.

Q Now, you stated that you heard a conversation in Apartment 5-D, is that correct?

A Heard a conversation?

Q You heard a conversation at about 3:30, 4:00 o'clock you heard a conversation taking place in 5-D, is that correct?

A That's correct.

Q How many doors had you gone to before you arrived at 5-D?

A I believe it was the second door that I went to.

Q Did you hear any conversation in the first door that you went to?

A No, I didn't.

Q Had you heard Mr. Piper's voice at any time previously on that day?

A No, no, I did not, not on that day.

Q Had you ever heard Mr. Glasser's or Mr. Valverde's voice prior to that day?

A No, I didn't.

Q Had you heard any tape recording of Mr. Piper's

voice that day prior to 4:00 o'clock?

A On that day, no, prior to that, I had heard his voice before but not on that day, no.

Q When was that that you heard his voice before?

A I heard his voice on three or four other phone calls that had been recorded.

Q How long was the conversation that you had --

THE COURT: Had you ever heard Piper's voice?

THE WITNESS: Yes, your Honor, I had.

THE COURT: Had you ever heard Valverde's voice?

THE WITNESS: No, your Honor.

THE COURT: Had you ever heard Glasser's voice?

THE WITNESS: No, your Honor, I had not.

THE COURT: All right.

Q How long were you at the door listening to the conversation between the people inside the apartment?

A About ten minutes.

Q Did you hear any reference to drugs, any words that alluded to drugs? In other words, was there any mention of cocaine, heroin, marijuana, or anything of

that sort in the conversation?

A Well, if you are asking me did I hear any conversation that alluded to drugs, the answer is yes.

Q Now, did you hear any word, cocaine, marijuana, or anything else that denominates a drug?

A Yes.

Q What did you hear?

A I heard the word load or shipment which denominated -- which connotates in my --

Q It implied drugs, to you it implied drugs. I am asking you if you heard any word drugs, like cocaine, heroin, marijuana, something of that sort?

A No, I didn't hear the drugs named, no, I did not.

Q In what part of that conversation that you overheard did you hear the reference to a load?

A I'd say about two minutes after I started listening at the door did I hear the word shipment or load? I don't remember which of the two words it was. I'm not positive, but it was one or the other.

Q How long after you heard that did you hear March the 10th or March?

A Immediately. It was all in the same sentence.

Q You heard a complete sentence, is that correct?

A Yes, I heard -- I don't know if it was a complete sentence but I heard -- I believe it was a complete sentence.

Q Are you able to tell us today who made that statement, March the 10th was when the next shipment was going to be in?

A No, I can't tell you who made the statement. I can only tell you -- I can only tell you that -- what the statement prior to that statement was, and then you would have to assume for yourself.

Q I believe you stated on direct examination that you also heard a reference to four grams, is that correct?

A Yes, I did.

Q When the affidavit was prepared for the application for the search warrant, who prepared that affidavit?

A Mr. Fortuin prepared it with --

Q Did you tell Mr. Fortuin that you had heard also in that conversation a reference to four grams?

A I don't believe so.

Q Now, after you returned to the apartment at approximately between 9:00 and 9:30 that evening, did you see any objects removed from any of the bags, the litigation

bags, and placed into either on the table or on any other bags?

A I removed two guns from one of the bags, and I don't recall exactly where I placed them.

Q Were any of the contents of the other bags removed?

A Yes, sir, plastic bags were taken from one ofthe black suitcases, and I believe they were placed in a large suitcase which is down here somewhere.

Q Were any of the papers removed from any of the suitcases?

A Yes, sir, I believe so.

Q And were they removed while Mr. Fortuin was there?

A I don't recall. I believe so. Part of -- part of the papers I believe were taken from some of the bags during -- while he was there and then after he had l-ft, there were other papers and documents taken from them.

Q Before Mr. Fortuin was there, did all the bags, all the suitcases have something in them, either miscellaneous papers or the plastic bags?

A Before he arrived?

Q No, before he left.

A Before he left did all the bags have something in them?

Q Yes.

A I couldn't tell you that.

Q Did you examine all the bags yourself?

A At one time or another, I examined all the bags but at the time that he left the apartment, I couldn't recall if any of the bags were empty or --

Q I am sorry, go ahead.

A I was finished.

Q Were any of the bags empty while you were there?

A I don't remember.

Q You stated that when you arrived at the premises at about 5:30, 5:45, that Mr. Piper had already entered the apartment, is that correct?

A Yes, he had.

Q And you listened at the door, is that correct?

A Yes.

Q How long did you listen at the door?

A About 15 or 20 minutes.

Q Were you able to hear the conversation that took place inside the apartment?

A Well, as I said before, there was very little

conversation during that 20-minute period. The conversation that I did hear took place immediately prior to Piper exiting the apartment; and he was standing -- clearly he was standing just on the other side of the door right next to the door and then he opened the door.

Q I am sorry, I didn't hear on direct examination you heard what Mr. Piper said.

What did Mr. Piper say as he exited the door?

A Words to the -- I remember him using the word cat, and he said"Well I got to go meet the cat now."

Q While you were listening throug the door, were you able to hear any stereo or TV set on?

A I don't know if there was a TV or stereo on.

Q Was there a TV or stereo on at the time you were listening at the door at about 4:00 o'clock?

A I dont believe there was; but I couldn't tell you for sure.

Q When you prepared the return of the objects that were seized in the apartment, when did you prepare the return?

A Agent Gray prepared it and I believe he prepared it just before we left the apartment, secured the apartment and left.

Q At the time that you left the apartment, did you believe that the piece of paper that Mr. Fortuin found in the passport was a formula?

A Yes, I did.

Q And you did not place that in the return, is that correct?

A I believe that -- I believed it to be included under miscellaneous papers. I believe it would have been covered.

Q You stated that there came a time when you arrested Mr. Piper, is that correct?

A Yes.

Q And that was approximately 15 minutes after Mr. Piper and you left the apartment building, is that correct?

A Yes, sir.

Q So you did not arrest Mr. Piper immediately after exiting the apartment, is that correct?

A Yes.

Q Did you in conjunction with any assistant United States attorney prepare a complaint in this case? Not an affidavit for the search warrant, a complaint?

A Yes, sir, I believe so, yes.

Q Did you in fact sign a complaint?

A I think so.

Q Before signing that complaint, did you read the complaint?

A I believe so. Q. Was everything that was in that complaint accurate to the best of your knowledge at the time?

A To the best of my knowledge.

Q Did you tell the person who was preparing the complaint that you had arrested Mr. Piper immediately after leaving the apartment?

A I don't recall. I may have. I may have said immediately. I don't really rmember if I used that word.

Q Did you say to the person who was preparing the complaint that you arrested Mr. Piper as he left the apartment 5-D?

A I don't recall the exact words that I used in describing the sequence, that particular sequence that you are talking about.

MR. MC CARTHY: May I have this deemed marked, your Honor?

(Defendants' Exhibit C marked for identification)

MR. MC CARTHY: This is a complaint in the

case of United States of America against Samuel Glasser, Joseph Valverde and Eugene Piper signed by Mr. Hall and sworn to before Magistrate Jacobs on the 15th day of February.

Q I direct your attention to Paragraph 3 and ask you whether or not that refreshes your recollection as to whether or not you told the person who prepared this complaint that you arrested Mr. Piper as he left Apartment 5-D?

A Well, once again, I'd have to tell you that as to the exact words, I don't recall. I explained to whoever helped prepare this, Mr Fortuin, exactly how the arrest had taken place, and if -- whether it was interpreted as as he left because of the fact that he was in the process of proceeding to his next location, or whether I had used the exact words as he left, I really don't recall.

Q But you certainly didn't sign this before it was prepared, I mean you read it and then signed it.

MR. GIULIANI: Objection.

THE COURT: Don't labor this. I get the point. I don't think it's much of a point but at least what there is I certainly understand it.

Q You stated also that you opened a briefcase

belonging to Mr. Glasser in the apartment that day, is that correct?

A Yes, Mr. Glasser I believe opened it for me.

Q Well, how long after you entered the apartment was that briefcase opened?

A Approximately five, ten minutes.

Q Was Mr. Glasser in handcuffs prior to the time that he opened the alligator suitcase?

A He may have been in handcuffs, yes.

Q Did you remove the handcuffs?

A I don't believe so. I think -- I believe his handcuffs -- I believe he had his hands handcuffed in front of him, and I believe he opened the briefcase while the handcuffs were on, but I am not too sure about that.

Q Did you tell him to open the briefcase?

A I don't remember.

Q By the way, did there come a time later in the day of February 14th when you discussed with Mr. Piper the conversation which you had overheard in Apartment 5-D concerning the load coming in?

A Yes, I did.

Q When was that?

A In the car after he was arrested. No, excuse

me, excuse me, I didn't discuss the conversation with him; but I did ask him some questions to determine in my own mind whether he was telling me the truth, and as a basis of proving to myself whether or not he was telling me the truth, I used the conversation that took place in the apartment to make that determination.

Q What did you ask Mr. Piper and what did he say to you?

A I asked him if there was another load coming in, and he said, "Yes, there is another load coming in," and I said, "When's it coming in," and he said, "It's coming in in March." He didn't use the exact date. He didn't say March 10th; but the fact that he did say March, was a good indication to me that he was telling the truth.

Q By the way, was that immediately after you arrested him or was that later in the day when you arrested him? In other words, was that around 3:30 in the afternoon?

A Yes, this was about within say a 20-minute period after he was placed under arrest.

MR. MC CARTHY: May I just have a second, your Honor?

(Pause)

Q Now, Agent, when you had the discussion with Mr. Piper in the bedroom, in the master bedroom, did you ask him about the $10,000?

A Yes.

Q Did you ask him where it was located?

A Yes.

Q How long was your conversation with Mr. Piper in the bedroom?

A Well, I had -- I spoke with him on -- for a period of, I'd say, about off and on for a period of 20 minutes in the bedroom, and he made a phone call while he was in the bedroom. I spoke to him before the phone call, I spoke with him about the phone call, I spoke with him after the phone call about various -- I asked him various questions.

The money, the location of themoney was one of the questions that I asked him.

Q Did you ask him what conversation he had had with Mr. Glasser and Mr. Valverde when he entered the apartment?

A I don't recall if I asked him what conversation he had with them, but I did ask him if he saw where they put themoney, which one had it, if he had it in his pocket, put it in his briefcase, put it in the bedroom.

I asked him, you know, if he saw where he put the money.

Q Did you ask him whether or not either Mr. Glasser or Mr. Valverde went into the bedroom area during the period that he was in the apartment?

A During this conversation?

Q Yes, during this conversation.

A No, during this conversation I didn't, but during the conversation in the car I asked him where the cocaine had been gotten in the apartment, and he said that he believed it was inthe master bedroom.

Q At any time during the time that you were in the apartment from 5:45 for an hour and a half, did you ask Mr. Piper what transpired during the time for that 15 minutes that Mr. Piper was alone with Mr. Valverde and Mr. Glasser in the apartment?

A Are you talking about the 15 minutes immediately before his arrest?

Q Immediately before his arrest, yes.

A Yes, I did ask him about that, and I asked h[illegible] --my reason for taking him back into the bedroom was to find out -- to see if I could find out if he had tipped them off.

Q What did he say?

A He said he had not.

Q Did you ask him whether or not he was adhering to the script that you had previously set for him, to feign continuing the transaction?

A Well, I don't remember if I specifically asked him that, but I would have had my answer just from the fact that if he didn't tip them off that would have been sufficient.

Q Did Mr. Piper ever tell you that Mr. Valverde and Mr. Glasser went into the bedroom area during that 15 minute period immediately prior to the arrest for any length of time?

A I don't remember. I don't think so.

MR. MC CARTHY: I have no other questions, your Honor.

THE COURT: Anything else?

MR. GIULIANI: No questions, your Honor.

THE COURT: I think I will need to reserve decision and go overthe materials, and if I need any further argument or have any questions I will let you know.

MR. BRENNER: Your Honor, might I just give your Honor two citations, Second Circuit cases which I did not have with me when I prepared the previous memorandum?

The first case is United States of America

against La Vecchia. It is a slip opinion decided on April 4th, slip opinion No. 2741 is the page, and the inside citation is 2753, and also the case of United States of America against Gonzalez at 488 F. 2d, 833, 836-838 and that is a 1973 Second Circuit case.

THE COURT: Thank you very much.

MR. H. ROTHBLATT: Your Honor, we'd like to have leave to submit a very limited supplemental memorandum.

THE COURT: On what?

MR. H. ROTHBLATT: Dealing with a limited issue of the so-called formula, the admissibility of that, whether that might be expressed and what grounds. It raises some other Fourth and Fifth Amendment issues, and we'd like to brief your Honor so that your Honor can consider it, purely a legal issue that was not raised in our original motion papers.

THE COURT: When do you want to have that in?

MR. H. ROTHBLATT: About a week, your Honor?

THE COURT: This has not turned out to be an impressive motion. It's absolutely been shot down. Every witness you have called has reduced the merit further; and as far as the -- you know I have got to go

over the chronology --

MR. H. ROTHBLATT: I will take your Honor's suggestion.

THE COURT: I can't help but say, and you ought to be under no illusions, I reject the testimony of Mr. Glasser as far as the time and as far as the implication that there was a major search going on during the time he was in the apartment being held. Every witness you have called since then has destroyed that testimony or the implications thereof, and to me it is overwhelming, the evidence that the search took place after the warrant.

Now, there is a little bit of evidence that perhaps on a kind of tentative basis a book was pulled or a drawer was opened. I think that comes from Mr. Piper; but -- Piper said that Gray superficially opened a drawer or two quickly, removed a book from bookcase looking for $10,000 , and there was evidence that the gun was found there was a little conflict there, whether the case in which the guns were found was partially open or not; but the basic position which the defendants came to court on has been really found to be I think completely without merit by the witnesses you yourselves have called. You brought it all out.

I couldn't possibly hold other than that search

except possibly a tentative one or two things at the beginning which I don't think were really reliably established even on that, but what I am convinced of right now is the search occurred, and except for the one gun, all the items were located only after the warrant was issued.

The agents held fast, as they were required to do under the Supreme Court authorities until they had gotten the warrant; and after they had gotten the warrant they made their search and they made the seizures, and that's that.

Now, as far as the affidavit, I think the contentions on that are worth very little, really are without merit. I have two agents whose credibility seems to me to be really not shaken one bit.

MR. BRENNER: Your Honor, could I direct myself for one second to that?

THECOURT: I have heard them, and I have heard and considered the arguments about whether Agent Hall heard the conversation at the door. We have that testimony which is reasonable and really nothing to indicate that it would be inherently impossible to hear snatches of a conversation through a door if somebody was listening with an ear to that door, listening at the

door. The only thing indicating it would not be possible is the test by the expert, and that is a theoretical test, and although that offers an issue of fact, I resolve the issue of fact in favor of the testimony of the Agent Hall, and have no reason to believe that he was perjuring himself when he gave that information about overhearing the conversation about the load in March to Mr. Fortuin who was preparing the affidavit.

As far as the coercion of Mr. Piper and the invalidity of the recording of his telephone conversations, his own testimony is that he decided to cooperate, because he felt it was time that he looked after himself.

Well that was his decision. He obviously did cooperate, and he made those phone calls as part of that cooperation, and they were recorded and I know of no constitutional infirmity about those recordings.

The other arguments about falsification in the affidavit are really frivilous, and so I guess what I am telling you gentlemen, as long as we are sitting here, I really, subject to review and maybe I don't need to issue anything more, that right now from what I have heard and my initial review of my notes, and your materials, I don't think there is any merit to this motion at all.

MR. BRENNER: Judge, could I address myself

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just briefly to one point?

THE COURT: Yes.

MR. BRENNER: With regard to the alleged falsification in the affidavit, whether or not Agent Hall could in fact overhear what he said he did, he has just testified that just before Piper left the apartment at the very end that he heard Piper say "I am going to meet the cat." Piper did not testify, if I might just finish, Piper never said he said that, and in point of fact he would only have said that had he been adhering tothe script of not tipping off the defendants.

He said he had told them he'd been busted. He could have said, "I am going to meet the cat."

THE COURT: Look, you can argue and I don't blame you for arguing. I would make the same arguments, but it is not conclusive. He could have walked out of that door saying, "I am going to meet the cat" referring to a detective or anybody else. It's a term of -- it's just a form of expression.

MR. BRENNER: He knew he was going to be arrested by the agents, Judge. He couldn't possibly have used that terminology which would have denoted he was going along with the scheme.

THE COURT: It is an argument. It has no

weight against the other really overwhelming things. We're so much farther along by your own evidence. You brought it all out. You brought it all out basically, and there isn't anything left to this motion.

MR. BRENNER: I must respectfully disagree.

THE COURT: The one thing I want to make sure of, and I think this takes some review, and I will certainly receive any authorities and read your citations:

I want to go over the inventory and make sure that it didn't exceed the scope of the warrant, but that is really a matter of comparing the evidence about what the inventory, what was written down in the inventory and compared again with the warrant, but I really don't see that there is any real basic merit to it.

Your original position was that this search occurred before the warrant was issued.

MR. BRENNER: Not the entire search but a substantial portion of it which was later reported.

THE COURT: All right, but it just --

MR. BRENNER: I think there are contradictions in the record.

THE COURT: Your basic position is undermined, I think, quite thoroughly, and there may be a few shreds left to worry about, but there is very little.

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MR. H. ROTHBLATT: Judge, may I say this just very briefly:

I think your Honor hit on the head one of the issues, precise issues that we wanted to brief, whether or not a search was within the scope of the authorized search under the search warrant.

That is precisely what we intend to brief. And I would like to say further, Judge, I appreciate any Judge telling me what is on his mind when he is about to make a decision. It certainly makes our job much easier. We know where we might succeed in persuading you or dissuading you, and I hope that at least your Honor considers yourself fallible and open minded that we might convince you otherwise, but I appreciate your telling us that.

THE COURT: What do you intend to do? I don't see that we have to have an extensive briefing schedule.

MR. H. ROTHBLATT: No, it will be a very short memorandum giving you what we thing are the highlights and we want to brief on the law the areas that you specifically hit.

THE COURT: Well, I think you ought to have that very quickly. This is Thursday. I think you ought to have anything you want to submit by the end of

JUDGE GRIESA'S RULING ON MOTION TO SUPPRESS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
-versus-	:	74 Crim. 189
SAMUEL GLASSER and JOSEPH VALVERDE,	:	
Defendants.	:	

May 23, 1975

BEFORE:

HON. THOMAS P. GRIESA,
United States District Judge.

APPEARANCES:

FOR THE GOVERNMENT:
Paul J. Curran, U.S. Attorney,
BY: John F. Flannery, Assistant U.S. Attorney.

FOR THE DEFENDANT GLASSER:
David McCarthy, Esq. and Joel Brenner, Esq.

FOR THE DEFENDANT VALVERDE:
Henry Rothblatt, Esq.

are referring to came from one of these suitcases or the briefcase?

MR. FLANNERY: Your Honor, the problem I have in responding is the alligator briefcase. It is simple for me to respond to what came out of that, but with respect to the other cases, we have used the demarcation of two LGA bag tags and the number on the bag tag. Without referring to the bag specifically, I can't, at this moment, give you an answer.

THE COURT: I'm not asking which one it came from but did it come from one of the cases referred to? Did each item come from one of the cases referred to?

MR. FLANNERY: Yes, it did, your Honor.

THE COURT: All right. And you offer those for the purpose of this hearing?

MR. FLANNERY: Yes, I do, your Honor.

THE COURT: Let me put a statement of my ruling on the record.

This ruling is in response to the motions to suppress, made by Defendants Glasser and Valverdo, which had been the subject of evidentiary hearings held recently.

These defendants move to suppress tape recordings of two telephone conversations intercepted on February 15, 1975 between codefendant Piper and

Defendants Glasser and Valverde.

They move to suppress all items seized on February 14, 1975 in a search at Apartment 5-D, 205 East 63rd Street, New York.

They move to suppress all evidence derived from the items above described.

These defendants claim that the recorded telephone conversations must be suppressed because Piper was acting in such a manner as to indicate that he had not consented to participating in these conversations or to having them recorded; that he acted involuntarily.

The defendants claim that the items found in the search at the 63rd street apartment should be suppressed because the search was carried out before a warrant was obtained. They also contend that even if the search occurred after the warrant was obtained, the affidavit on which the warrant was based failed to state probable cause and contained a knowingly false representation by the person making the affadavit.

Finally, the defendants contend that the items seized exceeded the scope of the warrant.

The motions to suppress are denied except as to one gun, Government's Exhibit 6 on this hearing, which was seized without justification before the issuance of the

warrant.

The Government has presented the following version of the facts which I accept in all essential respects:

In early February, 1975 one Steven Greenstein, a codefendant here, was arrested by Sergeant Jeffrey Hall. At the time of this arrest, Greenstein was in possession of approximately 8 ounces of cocaine which he had agreed to sell to an undercover agent.

After his arrest, Greenstein agreed to cooperate and told Hall that his source of supply for cocaine was Eugene Piper, another codefendant here.

Hall gave Greenstein $10,000 in Government funds to use for the payment of narcotics.

On February 14, 1975, at about 3:30 p.m., Greenstein gave the $10,000 to Piper in payment for cocaine.

Piper was immediately followed as he went to 205 East 63rd Street. Piper entered the building, went up the elevator, which was seen to stop at the fifth floor.

Agent Hall proceeded to the fifth floor and determined that Piper was in Apartment 5-D by listening at various apartment doors.

Standing outside this apartment, Agent Hall

heard a conversation between Piper and a person whom Piper called Joe.

This latter person said something to the effect that there would be a new load March 10th.

Piper then left Apartment 5-D, went downstairs and took a cab heading uptown.

The agents followed him and arrested him a few blocks from Apartment 5-D.

He didn't have in his possession any of the $10,000 given to him by Greenstein. However, he had one-half kilogram of cocaine in his possession.

After his arrest, and after being informed of his rights and being told that he was in serious trouble, Piper, in order to assist his own position, decided to cooperate.

Piper told Hall that his source of supply for the cocaine was Joe Valverde who lived in Apartment 5-D.

Piper agreed, upon request, to make telephone calls to his source of supply, and he allowed the agents to tape these telephone calls. The calls were made from a public telephone booth with the agents standing by, and they worked the recorder.

Piper placed two telephone calls to Valverde's

number at Apartment 5-D at the 63rd street address and spoke to two persons, Joe and Sam.

The conversations were sufficient as to indicate that they related to narcotics. The conversations were held at approximately 3:30 p.m.

Later that afternoon at 5:30 p.m., at the direction of the agents, Piper returned to Apartment 5-D. A few minutes later, as Piper was opening the door to leave the apartment again, the agents rushed in and proceeded to arrest Piper and the other two persons in the apartment who turned out to be Joseph Valverde and Samuel Glasser. All three of these persons were arrested in the living room of the apartment.

The apartment also had two bedrooms, two bathrooms, a kitchen, and a foyer attached to the living room.

At this time the agents didn't yet have a search warrant. They searched the persons of the defendants in the area of the living room under the immediate control of the defendants.

They also proceeded to the back rooms to determine whether there were other persons in them.

The Government contends that in these rooms, other than the living room, no search was made except

in an attempt to detect the presence of other persons.

The only exception to this is the admitted look into a large briefcase called a litigation case in which a gun was found.

It was originally the Government's contention that the gun was found because the case was partly open, but the evidence doesn't support this contention. As I have indicated, it is my view that the search in this case occurred in an unjustified manner prior to the issuance of the warrant, and this particular gun which was thus found, Government's Exhibit 6, will be suppressed.

Except for the discovery of this gun, which was admitted to by the agents in their testimony, the agents testified convincingly and consistently that they made no search in drawers, in books, in cases, or in other places in the back room during the time about which we are speaking and before the later time when a warrant was obtained.

I credit this testimony and find in accordance with it.

The only contradiction comes from some rather vague testimony by Piper who believes he may have seen some opening of drawers by agents.

However, upon consideration of this, I find in accordance with the version of the Government.

There is also the testimony of Glasser to the effect that while he was sitting in the living roomm, he heard cries indicating that agents were finding objects and he saw a large bag being carried around. Although Glasser doesn't testify to having seen any search in the back rooms, he would have us draw the inference from his testimony that a search was going on.

After my observation of Glasser, and considering his testimony on this and other matters, I am compelled to hold that he is a witness of the most doubtful credibility and, to the extent that his version of the facts contradicts that of the Government agents, I am obliged to reject it.

During his stay in the living room following his arrest, Glasser was asked to identify himself and he voluntarily produced a briefcase, opened it, and made available to the agents a current passport of his.

There is a contention that this passport should be suppressed. I reject that contention.

Although there is a conflict in the evidence between what the agents say and what Glasser says about the time when the defendants were removed from the apartment, again I find for the Government's version. All three of the defendants were removed from the apartment somewhere

between about 7:15 and 7:30 and taken away by car.

Prior to the removal of the defendants, the agents had made calls to the United States Attorney's office to ask that a search warrant be obtained for the apartment.

Agent Hall left shortly before 7:00 p.m., and proceeded to see Assistant United States Attorney Fortuin; Fortuin prepared the affidavit for signature by Hall in order to obtain a search warrant. The affidavit was based upon Hall's version of the facts.

The affidavit recited the incidents with Greenstein and Piper; the telephone calls made to the apartment by Piper, which were recorded; the affidavit recited that Hall had heard the conversation outside of 5-D and then had followed and arrested Piper with the half-kilo of cocaine in his possession.

The affidavit recited what Piper had said about his source of supply being Joe Valverde in Apartment 5-D.

As I have said, the affidavit mentioned the phone calls placed by Piper which were recorded. The affidavit says that the phone calls were made to two persons named Art and Sam. The use of the name Art was a mistake but not obviously a fatal one. And certainly it

indicates a mistake rather than any kind of perjury, if that's what the defendants are contending.

After the affidavit had been prepared, Hall and Fortuin proceeded to the apartment of Magistrate Jacobs, and a warrant was issued at approximately 10:45 p.m.

Hall and Fortuin proceeded back to Apartment 5-D and arrived there at about 9:00 p.m.

There was a search of one of the bedrooms which lasted about an hour, and during this search, which was described in detail by the witnesses, all of the items about which we are now concerned as having been seized were found except for the gun, Government's Exhibit 6 which I have already mentioned, and the current Glasser passport, Government's Exhibit 9, which I have also already mentioned.

The principal items found were three books containing amounts of cash. One of these amounts was the $10,000 in Government funds which Piper had taken into the apartment the afternoon of February 14.

There was also found inside of a suitcase, some plastic envelopes with cocaine residue.

A second gun was found. A number of items were found inside an alligator attache case including an old passport of Glasser's and what appears at first glance

to be a formula for the production of narcotics.

The passport and the formula are Government's Exhibits 8 and 8-A.

The second gun is Government's Exhibit 7.

The plastic envelopes with the cocaine residue are Government's Exhibit 5.

The book and the $10,000 therein are Government's Exhibit 1.

Going back to the formula, it was found inside the Glasser passport. In other words, the formula, Government's Exhibit 8-A, was found inside the old Glasser passport, Government's Exhibit 8, which was in turn inside the alligator attache case.

Two other books containing cash are Government's Exhibits 12 and 13.

Also found was a group of invoices for tubing and other chemical apparatus and substances, Government's Exhibit 11. These invoices were found in one of the cases or suitcases which were searched in the bedroom.

In addition to what I have already mentioned, the Government has identified today and introduced for purposes of this hearing a number of other papers of various kinds including checks passing between the two individuals, Valverde and Glasser, and a variety of other

items that were identified on the record a few minutes ago by the Assistant United States Attorney.

In connection with the argument about the search being beyond the warrant, I should note here that the warrant authorizes a search for money, which is official advance funds of the United States Government, or the proceeds of "a narcotics transactions" and narcotic drug controlled substances. I emphasize, as was pointed out earlier in the argument today, the ungrammatical phrase "narcotics transactions".

Some argument has been made that only the proceeds of a single narcotics transaction could be seized under this language.

I will deal with the arguments of the defendants now. There is the contention that Piper's recorded phone conversations should be suppressed because he was coerced into making them. I find against this contention. Piper has clearly testified that he was advised of his rights immediately, and that he decided in his own best interests to cooperate. This was his own voluntary cooperation, and he was not coerced, and I so find.

The main contention with which this suppression motion was initiated was the contention that the search was carried out before the issuance of the warrant and was

somehow reenacted after the warrant in order to appear to comply with the law. This contention has been completely destroyed by the evidence which has been brought out by the defendants on questioning, except for the gun, which I have mentioned as Government's Exhibit 6.

I find it conclusively established that the agents were well aware of the necessity of obtaining a search warrant before making their search of the bedroom, and they carried out their duty and refrained from making such search until after the time they obtained the warrant.

The defendant's contention that the affidavit in support of the warrant failed to furnish probable cause for the issuance of the warrant hardly needs discussion. The affidavit indicated clearly that there was reliable information to the effect that two cocaine suppliers were present in Apartment 5-D at the 63rd Street address and had been found and arrested prior to the issuance of the warrant.

With respect to the claim that there was certain perjured information contained in the affidavit, I reject that argument. One of the contentions here is that Hall couldn't have heard a conversation in Apartment 5-D at the time he claimed to have been listening outside the door and hearing about a new load in March. This contention

of the defendants is based upon the testimony and experiments of an audio expert.

I have considered the testimony of the audio expert and I have also considered the direct testimony of Hall. I accept the testimony of Hall without question or without reservation.

There is a contention that the search exceeded the scope of the search warrant. First of all, the defendants complain that the Assistant United States Attorney, Mr. Fortuin, was not a person authorized by the warrant to execute the search. However, 18 U. S. C., Sec. 3105 provides that a person may assist in a search in aid of the specifically authorized officer on his requiring it. The activity of Fortuin was clearly authorized by that statute.

Another contention is that the search went beyond the scope of the warrant which specifically authorizes looking for the proceeds of narcotics transactions and narcotic drug controlled substances.

In connection with this contention, we must keep in mind the fact that under the Supreme Court cases a search may include items which are inadvertently discovered by the officers in plain view in the course of their specifically authorized search.

The "plain view doctrine" permits search and seizure of items immediately recognizable as evidence.

At this point I should note that I reject the contention of the defendants that there was some limitation on the search imposed by the language "a narcotics transactions.. The warrant taken as a whole indicates to me that there is authority to search for narcotic drug controlled substances in general, and the proceeds of narcotics transactions, in general.

Now, it is clear that in order to search for these things it is not only permitted but is necessary to make as minute a search as the agents could possibly make. This would permit looking into cases, books, drawers and in similar places. This is exactly what the agents and what Fortuin did and, in the course of looking in books and cases, they came across the three stashes of money.

They also came across the formula, the old Glasser passport, the chemical order forms, the plastic envelopes with the cocaine residue, and the second gun.

All of these items would be clearly and immediately recognizable as either proceeds of narcotics transactions or narcotic drug controlled substances, or evidence necessary in a narcotics case.

Some of these items would constitute potential

instruments in a narcotics transaction. They were in plain view during the search of the case, and so forth, and were properly seized.

I would like to make a modification of the ruling I announced at the beginning of this statement, and this relates to the papers marked for the first time today, namely Exhibits 15 through 35.

Defendants apparently are asserting, or may wish to assert a Fifth Amendment privilege as to these papers. Now, with respect to any Fifth Amendment claim, I reject that as to all items othern than possibly Exhibits 15 through 35, but not having really inspected the latter group of exhibits, or heard argument thereon, I believe that I am not in a position to deal with any Fifth Amendment argument on this latter group of exhibits.

So as to these exhibits, I will not grant the motion to suppress but Iwill permit, at the trial, any argument as to Fifth Amendment privilege for these exhibits which may be appropriate. I believe that the status of these exhibits is such that we can safely wait until the trial, is that correct, Mr. Flannery?

MR. FLANNERY: Yes, your Honor.

THE COURT: All right. Another point which may be safely preserved to the defendants is the point that

perhaps Exhibits 15 through 35 were not properly within the plain view doctrine. In other words, on those latter exhibits I think I better reserve decision until a later date.

Thank you very much.

MR. ROTHBLATT: Your Honor, may I respectfully suggest that there is one other point that we have raised that your Honor didn't rule on and that is that we contend that the warrant was improperly executed. Not only did it exceed the limits of the warrant but the manner in which it was executed was improper.

THE COURT: I will reject that. Thank you.

(In the robing room.)

THE COURT: I neglected to put on the record something about a trial date.

Now, I received a letter May 6, 1975 from Mr. Giuliani indicating that there might be the risk of flight since to some degree the evidence in the case has come out in the suppression hearing saying the government is ready for trial and the trial should be speedily held.

Now, I had previously told everybody that I am not in a position to try this case until the fall. The case has to be tried before the fall or, if there is some definite risk of flight or some other problem that has to

be handled in some other way before being tried, but in some other way besides me trying this case before the fall.

I have since received a letter from one of the lawyers saying that he was relying on my fall proposal and had scheduled other trials in the meantime. I just want to reiterate that there is no way in the world that I can try this case before the fall.

Now, I think it was very nice of Mr. Giuliani to make his pronouncements in the letter of May 6th but I don't know what I do about a bunch of pronouncements. If someone wants to move for increased bail, or to do something definite, that can be done, but there is no application for increased bail, and I certainly am not going to do it on my own hook, and until there is some definite application by somebody, we will adhere to the ruling previously made, and I am afraid that I will have to wait until early September to even give you a date because I want to try to get the fall schedule worked out in some comprehensive manner.

MR. MC CARTHY: Lest there be any question with respect to Mr. Glasser, we have objection to trying this case in the autumn.

THE COURT: Can we wait until shortly after Labor Day and then fix our time?

MR. ROTHBLATT: I think so, your Honor.

THE COURT: Unless you a[illegible]oing to get locked up for the whole fall?

MR. ROTHBLATT: No, I don't think so.

THE COURT: How long a trial do you think this will be?

MR. ROTHBLATT: How long will the government take?

MR. FLANNERY: The government's case, I think, will take two-and-a-half days.

THE COURT: All right. I think we can work it in. I know we can work it in. It is just that I much prefer just trying to arrange a comprehensive fall schedule rather than schedule it now.

Is that all right with you and Mr. Glasser?

MR. ROTHBLATT: Yes, your Honor.

MR. MC CARTHY: Yes, your Honor.

THE COURT: All right. Thanks a lot.

(Hearing concluded.)

THE TRIAL

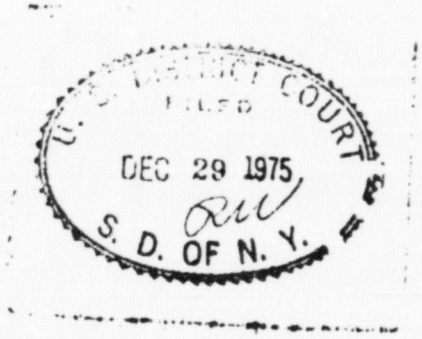
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	Before:
UNITED STATES OF AMERICA	HON. THOMAS P. GRIESA, D.J., and a jury
vs.	
SAMUEL GLASSER and JOSEPH F. VALVERDE,	75 CRIM. 189
Defendants.	

New York, December 8,9,10,12, 1975



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs. 75 Cr. [redacted] 745

SAMUEL GLASSER and
JOSEPH F. VALVERDE,

Defendants.

New York, New York.
December 8, 1975 - 10:00 A.M.

Before:

HONORABLE THOMAS P. GRIESA, District Judge

and a jury

APPEARANCES:

THOMAS J. CAHILL, United States Attorney for the
Southern District of New York.
THOMAS ENGEL, and
JOHN FLANNERY, Assistant United States Attorneys.

MC CARTHY, DORFMAN & BRENNAN,
Attorneys for defendant Glasser
1527 Franklin Avenue, Mineola, N.Y.
By: DAVID MC CARTHY, ESQ., of Counsel.

HENRY ROTHBLATT, ESQ.,
Attorney for Defendant Valverde.
By: HENRY ROTHBLATT, ESQ., and
JOHN ROTHBLATT, ESQ., of Counsel.

(In the robing room.) 284a

THE COURT: We had a motion that was skirted at our proceedings on Thursday.

MR. ROTHBLATT: Your Honor, my nephew, John Rothblatt, has been working very diligently and conscientiously and if your Honor doesn't mind, he will handle that argument.

THE COURT: All right.

MR.J. ROTHBLATT: As to those items, 14 through 34, that your Honor reserved decision on the suppression motion, there were two grounds that we alleged.

THE COURT: Have you got the list of items?

MR. J. ROTHBLATT: Yes, I do, your Honor. It consists mainly -- I can generally categorize this --

THE COURT: Is there any way I can see that?

MR. J. ROTHBLATT: Sure.

THE COURT: Are these numbers of exhibits marked for identification at the suppression hearing?

MR. MC CARTHY: Yes, Judge.

THE COURT: So the record is clear on that.

MR. J. ROTHBLATT: They were actually marked the date you rendered an oral decision. I believe that was May 23, 1973.

THE COURT: Anyway, if you talk about Exhibits 14 through 34, we know the record shows what we are talking about.

MR. J. ROTHBLATT: Oh, yes, it does.

THE COURT: Thank you, go ahead.

MR. J. ROTHBLATT: As indicated, your Honor, following the suppression hearing we submitted a supplemental memorandum in which we raised a Fifth Amendment issue and also expanded our argument regarding the fact that the search exceeded the scope of the warrant and I will address myself to those two points.

Essentially these papers, these exhibits, 14 through 34, consist of miscellaneous papers that were discovered in various suitcases that were in the apartment. It consists of such things as personal diaries, notebooks, memoranda, letters, things of that nature, written material.

THE COURT: 14 is a log book.

MR. ENGEL: That is the log book from the DEA headquarters. I think you mean 15 though 35.

MR. J. ROTHBLATT: Does it begin with 15? Okay. There are some exceptions.

THE COURT: 15 is Glasser's checks to Valverde. Are you asserting a Fifth Amendment privilege on that?

MR. FLANNERY: As to a co-defendant? I don't

understand.

MR.J. ROTHBLATT: I am generally categorizing. There are some papers there that are memoranda.

THE COURT: Let's take the point one by one.

MR. J. ROTHBLATT: I believe my argument to the Fourth Amendment will apply to everything. The Fifth Amendment might not.

THE COURT: Let's get the Fourth Amendment. Is this strictly about the scope of the warrant?

MR. J. ROTHBLATT: That is correct.

THE COURT: All right. Let me see the warrant.

MR. ENGEL: Judge, here is a copy of the affidavit.

THE COURT: I protest again. I was told on Friday that there was a Fifth Amendment problem raised about -- I don't know how it was described, but I think it was described as being about the one or two items. For instance, I had the impression you were talking about the --

MR. ENGEL: There was a chemical formula, I believe I mentioned specifically, Judge.

THE COURT: -- the chemical formula.

Now, we have a jury sitting out there and all of a sudden I am told that there is an additional Fourth Amendment problem and that we have about 20 items to be

covered. I could have met with you some evening last week. I could have reviewed my decision on the suppression motion, I could have gotten oriented.

The Fifth Amendment problem is something that I feel I could have handled in about a very few minutes this morning. It didn't raise any tremendous problems.

But in order to do any kind of an intelligent job on a Fourth Amendment problem, I would have to go over the record of what I did before, see what was open and, I mean, I could spend an hour on this with that jury sitting there.

Why didn't somebody warn me?

MR. ROTHBLATT: Judge, I agree. Perhaps what we ought to do is move forward and maybe at the recess this afternoon we can sit down and go over that with the jury excused.

I agree.

THE COURT: When is the Government going to want to introduce these items?

MR. ENGEL: Judge, they wouldn't be coming right away. But I would like to know what it is Mr. Rothblatt's argument is. He says that it is an omnibus motion with respect to all exhibits, and --

THE COURT: He didn't say all exhibits, he said 15 through 35.

MR. ENGEL: 15 through35, all relevant exhibits. If we could know what that is, perhaps you could solve that in a matter of minutes, too, and so we can proceed.

MR. J. ROTHBLATT: Our position was set forth in a supplemental memorandum following the suppression hearing. Essentially it is the same position.

THE COURT: Where is the supplemental memorandum? Do you have it?

MR. J. ROTHBLATT: It is in the record. Yes, I have one copy of it here.

MR. FLANNER: Your Honor, isn't that the memorandum that was submitted prior to your decision?

THE COURT: Let me see. When was my decision on the motion to suppress?

MR. FLANNERY: Following that, May 23.

MR. J. ROTHBLATT: May 23, and your Honor left open the question of Exhibits 15 through 35, which were marked for the first time the date of your decision.

THE COURT: I am sorry, but all I am saying is, I wish somebody had reminded me, because from a practical standpoint I have got to get oriented before I can discuss this thing with anybody.

MR. ROTHBLATT: Judge, why don't we do it at the end of the day? We can sit down and do it at our leisure.

THE COURT: I don't have any leisure.

Do you have the record?

MR.FLANNERY: I do, your Honor. With respect to those matters reserved for the time of trial it was as to the Fifth Amendment privilege.

THE COURT: Let me see it.

MR. FLANNERY: I believe it is on about those papers that I have indicated to you.

THE COURT: Have you gone over this record?

MR.J. ROTHBLATT: Yes, I have.

THE COURT: What did I reserve and where did I make the reservation?

MR. J. ROTHBLATT: Pages 34 and 35 of that transcript, your Honor.

THE COURT: All right. Beginnin at page 16 of the transcript of May 23, 1975, Mr. Flannery marked for identification Exhibits 15 through 30, and that marking encompasses pages 16 through 19 of the record.

On page 20 I put a statement of my ruling on the record and I described the motion to suppress as relating to all items seized on February 14, 1975, in a search at

apartment 5D, 205 East 63rd Street, New York. That is page 21 of the record.

At page 21, at the bottom of the page, I stated, "The motions to suppress are denied except as to Government Exhibit 6, which was seized without justification before the issuance of the warrant."

Then I gave a long statement of the facts.

At page 29, I start a description of what obviously were Exhibits 15, and so forth, and I say, "In addition to what I have already mentioned, the Government has identified and introduced for purposes of this hearing a number of other papers of various kinds including checks passing between the two individuals. Valverde and Glasser, and a variety of other items that were identified on the record a few minutes ago by the Assistant United States Attorney."

On page 32 I start a description of the contention, that the search went beyond the scope of the warrant. And I reject the argument, and I am speaking of all of the items referred to at the hearing.

Now, on page 34 I said, "I would like to make a modification of the ruling I announced and this relates to the papers marked for the first time today, namely, Exhibits 15 through 35.

"Defendants apparently are asserting, or may wish to assert, a Fifth Amendment privilege as to these papers.

"With respect to any Fifth Amendment claim, I reject that as to all items other than possibly Exhibits 15 through 35, but not having really inspected the latter group of exhibits or heard argument thereon, I believe that I am not in a position to deal with any Fifth Amendment argument on this latter group of exhibits.

So as to these exhibits, I will not grant the motion to suppress but I will permit at the trial any argument as to Fifth Amendment privilege for these exhibits which may be appropriate."

And we said it could wait until the trial.

Well, there is another point. Another point at the bottom of 34, "Anouther poiint which may be safely preserved for the defendants is the point that perhaps Exhibits 15 through 35 were not properly within the plain view doctrine. In other words, on those latter exhibits I think I better reserve decision until a later date."

So both items were left open, both points were left open, and I undertook to read or look through exhibits 15 through 35, which I certainly have not done, and I am not in any more of a position to rule now than I was when

I made the statement on May 28 or May 23, and that is where we stand, and we will go forward with the trial and we will have to handle it in some way when the time comes.

I am just not going to sit here and start in -n a suppression hearing right now.

Okay.

MR. MC CARTHY: Judge, I have one other matter, and that is that on Friday afternoon late in the evening I received a copy of Government Exhibit 3500 material, Number 3509, which is Mr. Gu-liani's notes of his conversation with Mr. Piper, and at page 16 of those, and based upon this I am asking to reopen the hearing on the grounds which your Honor had previously ruled, not on the two grounds which remain open, and that is that -- and this is my offer of proof -- Mr. Piper apparently told Mr. Guiliani -- the pages are not numbered, your Honor, so it is page 16 --

THE COURT: When did you get this?

MR. MC CARTHY: Friday afternoon.

THE COURT: I have got a phone number in the phone book. I was home all week end and I could have heard from you. Why didn't you call me?

MR. MC CARTHY: Judge, I read this for the first time Friday night. I apologize. I didn't know your Honor would take phone calls on the weekend.

Your Honor indicated you had matters on this morning so I thought it inappropriate to come in nine o'clock this morning.

THE COURT: I will tell you right now, any Judge would like notice rather than to have an offer of a reopening of a heavy suppression hearing with a jury sitting out there waiting.

MR. MC CARTHY: I apologize, Judge.

THE COURT: I happened to be here until very late Friday night.

What is your point?

MR. MC CARTHY: I received some of the 3500 material the night before we started the hearing, Judge, and this was not included. If this had been included I would have arranged this the first thing Thursday morning. The point is at pages 16 -- which is the bottom of the page, it says -- I am sorry, page 17, it says at the bottom of the page, starting the third line, "Taken into the bedroom" --

MR. ENGEL: It is four from the end, Judge.

THE COURT: What is that?

MR. MC CARTHY: The bottom of the page, your Honor, it says, the third slash mark, "taken into the bedroom by another agent. Hall asked if I knew what they did with the ten thousand dollars. Piper said no."

Then it goes on to say "Gray looking in drawers, looking at books."

It says, " Place smells of ether. During time in bedroom, saw two guns on the bureau."

Then another line down slash mark "saw plastic bags on floors near the luggage. Looked like turned inside out. Brought it back into the living room."

What I am relating this to, your Honor, is the fact that at testimony at the suppression hearing, one of the issues at fact was whether or not the litigation bags had been opend previous to the receipt of a search warrant at 9:24 that night.

Mr. Piper testified and Agent Hall testified that Mr. Piper was taken back into the room while the three defendants were still at the apartment prior to the search warrant, prior to the time they were removed from the apartment. And although Mr. Piper did testify that he had seen Mr.Gray looking in a drawer, he didn't speak in the plural despite being asked that question, and certainly didn't testify that he saw two guns, one of which your Honor did suppress because Agent Gray said he opened the litigation bags and removed one of the guns, but as to the other gun your Honor didn't suppress that gun because the testimony was that that was still within the bag.

THE COURT: What is your motion now?

MR. MC CARTHY: My motion is to suppress that second gun because of the fact that this indicates that a search --

THE COURT: What about that?

MR. ENGEL: Judge, these documents were turned over to Mr. McCarthy on last week at the close of business on Friday before the witness testified, well before the witness testified on direct examination. Whatever the --

THE COURT: Wait a minute. They were turned over?

MR. ENGEL: The Government is under no compulsion--

THE COURT: No witness has testified yet.

MR. ENGEL: Right, exactly. The Government turned it over to Mr. McCarthy.

THE COURT: Didn't you turn over any 3500 material prior to the suppression hearing?

MR. ENGEL: No. There is no requirement that the Government do so by the terms of the statute. Therefore, no 3500 material was turned over pursuant to any direction of the Court or voluntarily.

MR. MC CARTHY: May I just interrupt for a moment, please? That is to state this: On my direct examination of Mr. Piper, I asked him whether or not he ob-

served Mr. Guiliani taking any notes at the time that he was conversing with Mr. Guiliani. He said he did. I asked for the production of those notes, and it was refused. So I made an application at that time.

THE COURT: The trouble with not producing it is that -- and I think I probably stated this on the record-- you run into a possibility of risk of a mistrial or a reopening of the thing, and this is what we are running into right now.

But anyway, you didn't give them up at the time so we have got this problem. This definitely relates to the suppression hearing.

I don't know why in any common sense it wasn't produced.

But where do we go?

Piper testified what?

MR. MC CARTHY: Piper testified, your Honor, that he was BROUGht back into the bedroom, that he had a conversation with Mr. Hall, that he saw Mr. Gray look attentively --

THE COURT: Why did I suppress the one gun? WAs it taken out of a case?

MR. MC CARTHY: Because Agent Gray testified without equivocation that he had removed it from a case, from

one of those litigation bags.

THE COURT: Prior to the warrant?

MR. MC CARTHY: Prior to the warrant.

THE COURT: All right. Now, here the testimony is that it was lying on the bureau, so you would want me to infer that -- where was the second gun?

MR. MC CARTHY: The testimony was that the second gun, which was contained in a box, was contained in a litigation bag.

THE COURT: In other words, the testimony is that both guns were ultimately taken, or whenver they were taken, they were taken from litigation bags.

MR. MC CARTHY: That is correct, your Honor.

THE COURT: They were not just starting out on the top of a bureau?

MR. MC CARTHY: Absolutely correct.

THE COURT: So you would want it to be inferred that by the time Piper saw them on the top of the bureau, they had been taken out of bags.

MR. MC CARTHY: That is correct, not only that, your Honor, and this is one further point, he goes on to say he saw plastic bags on the floor near the luggage. The testimony of the agents at the hearing without equivocation --

THE COURT: Let's try to shortcut this.

If it is true that both guns came from a bag or bags and if it is true that Piper saw when he was taken into the room, if he saw both guns on top of a bureau, it would seem to me a reasonable inference to draw that both guns, and not justone gun, was taken out of the bag or bags before the search warrant.

Now, I don't want to rush this, but if we can simply use our, you know, some kind of good sense, maybe we can eliminate the need for calling Piper and going through a lot of additional work.

MR. ENGEL: I think, Judge, what we can do with respect to the second gun, you, as the trier of fact, must, of course, decide whether or not if Piper were to testify that there were two guns, whether you could credit Piper's testimony as against what the agent's testimony has already been. However, the Government will suggest that Mr. Piper is a witness that we intend to call today. Mr. Hall and Mr. Gray can be available at a moment's notice, and we can solve the problem either through the cross-examination of Mr. Piper at trial or, in addition, through the testimony of the agents, say at 4:30 this afternoon, and in that way --

THE COURT: I was just wondering whether you

would consent to a suppression of the second gun.

MR. ENGEL: I think at this time, your Honor, the Government's position would be that we would like to hold that off until 4:30.

THE COURT: Why don't we do this: This is not the kind of suppression motion that is going to knock the trial completely out. You don't need to worry about a right of appeal or anything now, I wouldn't think. You heard the point made by Mr. McCarthy, and before there is any reference to either of the guns or any attempt to introduce it, we will caucus and see what your position is.

Right now obviously I don't have in mind all of that testimony and I couldn't possibly evaluate this isolated piece of material, you know, as against the other things.

So I will reserve decision on the motion and we will just have to take it up in some appropriate way later.

MR. MC CARTHY: May I just elaborate briefly? That is, that I would like the record to be clear, and I don't want to mislead your Honor, I am arguing that this not only extends the guns, but also extends to the plastic bags which are outside of the luggage and which are very important in this case because there is an allegation that

there is a residue of cocaine found in one of the plastic bags, and also I would argue for the record that this indicates that, contrary to the testimony of Agent Gray and Agent Hall, that there was an exploratory search preceding the search warrant.

THE COURT: I thought your motion was just to suppress the gun.

MR. MC CARTHY: The motion, your Honor, is to suppress the gun and the plastic bags, and also to argue to your Honor that this indicates an exploratory search preceding the search warrant.

THE COURT: It is a motion to reopen the entire suppression hearing.

MR. MC CARTHY: That's right, your Honor.

MR. ENGEL: Your Honor --

THE COURT: I just can't emphasize to you ehough the impossible position this puts me in, just absolutely impossible. I would have to review the entire record to even know what you are talking about.

MR. MC CARTHY: I would only respectfully note I had asked for these papers at the time of the motion to suppress.

THE COURT: Yes, but you got them Friday afternoon and you knew we had a jury coming in this morning, and

at least over the weekend I could have somehow reviewed something, and I can't do it now. I am completely helpless as far as dealing intelligently with your motion.

MR. MC CARTHY: I respectfully apologize, your Honor.

THE COURT: It is just absolutely the most asinine thing I have ever heard of.

MR. ENGEL: Judge, perhaps we could divide these matters into four separate areas.

(1), the gun. The Government would consent not to refer at all to the gun which you didn't suppress until such time as either the Government consents to its suppression or the Government and the defense has a short hearing at the close of business today, for instance, and we can decide that issue.

That is the gun.

(2), with respect to the plastic bags, I believe that that can be handled in the same way. Mr. Piper's testimony at trial will include reference to those bags. I believe that the basis of that testimony alone, Mr. McCarthy's motion will be denied.

(3), we have the issue of the Fourth Amendment beyond the scope of the warrant, and the Second Circuit authority on that is very clear, there is a recent Second

Circuit slip opinion, U.S. vs. somebody, also known as Lee Evans, it was a decision Judge Hayes wrote of an appeal from a trial held before Judge Cannella, and there it was held that passports seized pursuant to a warrant, and the warrant was for a gun which could be concealed or disposed of, were properly seized as evidentiary material or material which might be evidentiary, even though the affidavit for the warrant and the warrant itself didn't provide, as in th is case it didn't provide, for such evidence, although here it was evidence relating to the narcotics trade.

So I think a lot of these exhibits, certainly the formula and others would come under the warrant, in any event.

But even if they didn't, the Maran doctrine, which the defense has raised in their papers, has not been completely rejected by Coolidge v. New Hampshire.

The Supreme Court has made it clear as long as the memoranda or small items, for instance, in this case that were seized and not specified in the warrant, as long as they were seized while the agents were legitimately executing the warrant, they may not be suppressed.

In other words, if they are accidentally found

(2)